883.h25
v.1 No 6

A COMPLETE SYSTEM OF CONVEYANCES OF, AND SECURITIES UPON LANDS;

OR, OF

HERITABLE RIGHTS,

ACCORDING TO

THE PRESENT PRACTICE OF SCOTLAND:

Including thoſe uſed in creating

FREEHOLD QUALIFICATIONS.

UPON A NEW PLAN.

In which the Names of the Clauſes are marked in the margin; and the

Inſtruments of Seiſine and of Reſignation connected with each Title annexed at the end of it.

By ANTHONY MACMILLAN.

EDINBURGH:
PRINTED FOR ELPHINGSTON BALFOUR.

M.DCC.LXXXVII.

MVSEVM
BRITAN
NICVM

PREFACE.

IT is a common, and in general a juſt complaint, that the world is overſtocked with books; and yet, in many branches of the law of Scotland, there is an abſolute ſcarcity. There have been few publications upon the Styles of Conveyances and Securities, in compariſon of thoſe on every other ſubject. Land is, indeed, itſelf an immoveable ſubject; but the rights thereof have not been always fixed and invariable in their form, and have accordingly, at different times, ſuſtained conſiderable alterations. Anciently almoſt every *Deed* of *Conveyance* was executed in the form of a *Charter*; this being the proper feudal grant. Theſe charters were commonly written in Latin,

Latin, occaſioned probably by the practice of writing every thing of any conſequence in that language, otherwiſe there were objections equally ſtrong againſt writing them in that language as in that of the country; there being many new terms for which no claſſical Latin could be found, which reduced Conveyances to the neceſſity of uſing ſuch Scots words with Latin terminations.—To make theſe writings more eaſily underſtood, they alſo departed from the Latin idiom, and adapted that of this country; hence the barbarous *Law Latin*, ſo diſguſting to a claſſical ear. The language of this kingdom not being then fixed, indeed, gave them ſome ground for uſing a different language more fixed, and commonly uſed by all the learned at that period: But, after lands came to be more commonly bought and ſold, and the language became more fixed, theſe charters, in a great meaſure, gave place to diſpoſitions and other writings; and the practice of writing in Latin gradually declined. Conveyances likewiſe, in every age, had ſome particular object in view, which engroſſed the greateſt part of their attention.

Thus,

Thus, it is obſervable how much attention has been paid in Profeſſor Spottiſwood's time, a little after the beginning of this century, to writings relating to lands holding ward, to prevent the many caſualties and forfeitures to which that ſpecies of holding was ſubject. To be convinced of this, it is only neceſſary to look at that gentleman's *Supplement*. Ward-holding being aboliſhed about the year 1748, every danger of that kind was at an end: Since which period, the creating of freehold qualifications has engaged equal attention. Notwithſtanding the very conſiderable alterations occaſioned, from theſe cauſes, in the Styles of Writings, there has been no publication of the forms of conveyances of lands, or ſecurities thereon, ſince that period. Theſe alterations in the art of conveyancing induced the author of the following ſheets to turn his attention to the publication of a Syſtem, according to the preſent practice. As he thought the method of treating Forms, in different and diſtinct branches, moſt conducive to inſtruction, he has confined himſelf in this treatiſe to writings uſed in conveyances of

and

and ſecurities upon land, and freehold qualifications. Theſe laſt he has, from beginning to end, had in his eye; and therefore, beſides giving the forms of writings uſed thereon, he has obſerved in what manner they were affected by every deed he had occaſion to inſert, which could any ways affect them; in which he acknowledges himſelf to be conſiderably addebted to Mr Wight's laſt publication on the Laws of Election, from which a number of the obſervations are taken. The arrangement is the moſt natural he could think of, and he has taken every opportunity of giving the examples, as they are conſecutive in practice, ſo far as this could be done conſiſtently with a ſyſtematical manner of writing. It has, for ſome time paſt, been cuſtomary for the perſon who frames the conveyances alſo to make out the inſtrument of ſeiſine thereon, and to tranſmit both to the notary to get the inſtrument taken. Notaries, on the other hand, frequently write the conveyances or ſecurities, and the inſtruments of ſeiſine and reſignation along with them. Mr Spottiſwood appears to have been abundantly

ſenſible

ſenſible of the importance of inſtruction in ſo natural a part of the inveſtiture, and accordingly has given inſtruments a place in his publication: But, although there is frequently a conſiderable degree of intricacy in theſe inſtruments, and difficulty in framing them, he has claſſed them all under one title, in a general manner, without applying them to the particular deeds he had given examples of in the other parts of the work. This was only excuſable in the office of a notary, which admitted of no other way of treating the ſubject; but not in a ſyſtem of heritable rights calculated for practice. This part of his upon inſtruments has, therefore, been found a very imperfect guide, and the practitioner has been obliged to depend very much on practice in this matter. To remedy this inconvenience, theſe inſtruments are here given at the end of each title, adapted to every particular conveyance in ſecurity. It was alſo apprehended it would conſiderably facilitate the ſtudy to a beginner, and tend to the conveniency of perſons further advanced in the art, to mark the names of the deeds, and clauſes thereof, on the

the margin, and a running margin, whereby the deeds, and whole clauſes of which they conſiſted, could be ſeen almoſt at one glance.—Having thus ſtudied to make this performance as uſeful and practical as he could, the author now ſubmits it to the public.

It is only neceſſary further to mention, that the firſt copy was made out in the end of 1784, and beginning of 1785; that, after reviſal, the greateſt part of it was copied over for the preſs before the author had an opportunity of ſeeing the advertiſement of any other collection; that the copy, when completed, was carried by him to town in April laſt; that, a few weeks after he left the town, he underſtood his manuſcript was amiſſing, and could not be found, ſo he was obliged to make out a new copy for the preſs, and tranſmit it as wanted; otherwiſe it would have been publiſhed before this time. This circumſtance, however, has been attended with one advantage, as it has given him an opportunity of reconſidering every part of it, and poſſibly, in ſome caſes, making it more finiſhed and correct.

CON-

CONTENTS.

TIT. I. Diſpoſitions.

Page

INTRODUCTION on the origin and nature of the conveyances of land and freehold qualifications, preſently uſed in Scotland - 1

Diſpoſition of lands - - - 15

Variation, if alſo of teinds - - 20

——— of milns - - - 21

——— of ſalmon-fiſhing - - ib.

——— of a right of patronage - ib.

——— if with conſent of the diſponer's wife ib.

——— if by a wife with conſent of her huſband 22

——— if by a truſtee, and in conſequence of articles of roup - - - 23

——— if on different narrative - 24

——— if in general diſpoſition - 25

——— if in liferent - - - 26

——— if of lands principal, and others in warrandice thereof - - - ib.

——— in diſpoſition where the granter has not got his titles made up - 28

Obſervations on freehold qualifications, and the method of ſeparating property and ſuperiority for creating thereof - - - 31

Feu-right - - - 38

Page

Right holding blench 43
Feu-charter - - ib.
Obſervations thereon 45
——— on the ſolemnities requiſite thereto 46
——— on feu-contracts ib.
——— on reconveyance of a feu-right 47
Diſpoſition of ſuperiority 48
——— of the property by the vaſſal to his ſuperior 54
——— of the ſuperiority by the ſuperior to his vaſſal 56
——— of ſubjects holding burgage 58
Deed of mortification 63
Obſervations thereon 64
Diſpoſition of teinds by a titular 65
Obſervations on inſtruments of ſeiſine 70
Inſtrument of ſeiſine upon a diſpoſition of lands 72
Further obſervations 74
Variation if the diſponee is preſent 77
——— if *propriis manibus*, ſee Tit. 7th ib.
——— if variations 1, 2, 3, 4, in the diſpoſition ib.
——— if on a diſpoſition with conſent of the diſponer's wife - - ib.
——— if on ditto by the wife of her lands 78
——— if on ditto by a truſtee, and in conſequence of articles of roup 78
——— if a variation in the narrative of the diſpoſition - - 79
——— if on general diſpoſition, containing diſpoſition of a particular ſubject, and ſee Tit. 8th ib.
——— if on a diſpoſition in liferent 80
——— if of lands principal and others in warrandice ib.

Inſtru-

Page

Inſtrument of ſeiſine upon a precept from the chancery - - 81
Variations if the lands lie in a ſtewartry 85
——— if held of the prince - ib.
——— if to an heir male, and of tailzie and proviſion - - ib.
Inſtrument of ſeiſine upon the diſpoſition by a perſon who had not got titles made up - 86
——— to an heir upon a general ſervice ib.
——— upon a feu-right - 88
——— upon a feu-charter - 89
Obſervations on the method of obtaining a charter from the crown upon a diſpoſition of ſuperiority ib.
Inſtrument of ſeiſine upon a charter of reſignation 90
Variation, if the charter proceeds upon a tailzie 93
——— if to a perſon ſerved heir in general 94
Inſtrument of reſignation *ad remanentiam* 95
Inſtrument of ſeiſine within borough. See Tit. 12th.
——— upon deed of mortification 98
——— upon diſpoſition of teinds 99

TIT. II. Diſpoſitions and Aſſignations.

Diſpoſition and Aſſignation to lands, and to a diſpoſition thereof before infeftment - 101
Tranſlation thereof - - 106
Reconveyance of a feu-right - - 109

Diſpo-

Page
Diſpoſition and aſſignation to a tenement within borough, and diſpoſition thereof 112
——— by an heir in general 116
——— of the ſuperiority of lands, and charter of reſignation thereof 117
——— of ditto in liferent, and ditto 120
——— of lands ſold by judicial ſale, articles of roup, and decreet of ſale thereof 125
Obſervations on the method of obtaining infeftment thereon - - 128
Diſpoſition and aſſignation of a decreet of adjudication - - - 129
Obſervations on the method of obtaining infeftment thereon - - - 134
Variation in the diſpoſition and aſſignation, if horning has been raiſed and executed againſt the ſuperior 135
——— if granted as a collateral ſecurity, if the lands are ſold by private bargain ib.
——— if by voluntary roup 136
——— if by a judicial ſale ib.
Obſervations on adjudication upon a truſt-bond, and conveyance thereof - 139
——— on adjudger's right to be enrolled as a freeholder - - - ib.
Inſtrument of ſeiſine upon diſpoſition, and diſpoſition and aſſignation thereto 141
——— upon ditto, and tranſlation thereof 143
——— upon feu-right, and rediſpoſition and aſſignation thereof 144
——— upon diſpoſition and aſſignation by an heir in general - - 145

Inſtru-

Page

Inſtrument of ſeiſine upon a charter of reſignation, and diſpoſition and aſſignation thereto 145

——— upon ditto, and ditto in liferent 150

Obſervations thereon - - 155

Inſtrument of ſeiſine upon a charter of adjudication in favour of the firſt adjudger 156

——— upon charter of ſale - - 159

——— on diſpoſition and aſſignation of charter of adjudication or ſale - - 160

Tit. III. Wadſets.

Obſervations on wadſets proper and improper 162

Contract of wadſet proper - 164

Variation, if the ſuperiority only - 170

——— if an improper wadſet - 171

Obſervations on the method of redemption thereof 173

Diſpoſition and aſſignation by way of proper wadſet of a ſuperiority - ib.

Variation, if the lands are valued *in cumulo* with other lands - - - 179

Obſervations - - 180

Inſtrument of ſeiſine on charter of reſignation upon a contract of wadſet - 181

——— upon a charter of reſignation and diſpoſition, and aſſignation thereto, by way of proper wadſet - - 182

TIT. IV. Excambion.

	Page
Obſervations on excambions -	184
Contract of excambion - -	186
——— (inſtrument of ſeiſine upon)	196

TIT. V. Rights in Security, of Relief, and Conveyances thereof.

Obſervations - -	198
Heritable bond -	199
Variations, if of corroboration -	210
Heritable bond of relief - -	ib.
Obſervations on rights in ſecurity and of relief	218
Diſpoſition and aſſignation to an heritable bond before infeftment, and annualrent and lands therein contained - -	220
Diſpoſition of an annualrent, and lands in ſecurity, by a perſon infeft therein -	225
Obſervations thereon - -	229
Mortification of an annuity -	ib.
Inſtrument of ſeiſine upon an heritable bond	231
——— upon ditto of relief	235
——— upon diſpoſition and aſſignation to an heritable bond -	238

Inſtru-

Page

Inſtrument of ſeiſine upon diſpoſition of annualrent, and lands in ſecurity - - 240

——— upon mortification of an annuity 241

TIT. VI. Bonds and Diſpoſitions under Reverſion.

Obſervations thereon - - 243

Bond and diſpoſition under reverſion 244

Variations, if to give previous intimation of a demand for payment, and containing power to ſell 252

Obſervations - - - 254

Inſtrument of ſeiſine upon bond and diſpoſition 256

Variations - - 259

TIT. VII. Contracts of Marriage, and Proviſions in favour of Wives.

Obſervations - - 260

Contract of marriage 261

Variation, if containing tailzie 269

Obſervations 273

Heritable bond of annuity to a wife in caſe of her ſurviving

Page

viving her husband, where there had been no contract - - - 275

Instrument of seisine upon a contract of marriage 281

——— *propriis manibus* on heritable bond of annuity in favour of a wife - - 284

Observations on instruments of seisine *propriis manibus* 289

Instrument of seisine *propriis manibus*, without a previous warrant - - 290

Tit. VIII. Of Legal Succession in Heritage, and Deeds of Special Destination, or Deeds to take effect after the death of the Granter.

Of legal succession in heritage, and deeds of special destination - - 292

Disposition to a son - - 303

Variation 1. If burdened with provisions to younger children - - - 308

——— 2. If the granter has a wife provided in a liferent annuity, and bonds of provision granted to younger children - - 309

——— 3. If containing *general disposition*, with the burden of payment of debts and provisions to younger children, and containing nomination of tutors and curators - - 310

Dispo-

Page

Diſpoſition to a daughter, excluding her huſband's *jus mariti* - - 315

(Obſervations on) - - ib.

——— Form of - - ib.

General diſpoſition, containing diſpoſition and aſſignation of a particular ſubject, and of the unexecute procuratory, and precept in a diſpoſition thereof 320

Heritable bond of proviſion - 322

Inſtrument of ſeiſine upon diſpoſition to a ſon 323

Variation, if variation 1. in the diſpoſition 324

——— if variation 2. - 325

——— if variation 3. - 326

Obſervation on clauſe burdening with debts 328

Inſtrument of ſeiſine upon diſpoſition to a daughter, excluding her huſband's *jus mariti* - 329

——— upon diſpoſition and general diſpoſition, containing diſpoſition and aſſignation thereto 331

Tit. IX. Tailzies, or Deeds of Entail, &c.

Obſervations - - 333

Deed of entail - - 338

Bond by an heir of tailzie for three-fourths of the expence of building a manſion-houſe, &c. aſſignation to the rents of the tailzied eſtate during the not payment, or heir of entail's life; and of the claim

Page

upon the next heir by act of parliament for payment thereof; and disposition to lands not entailed under reversion in further security 366

Observations on the method commonly used in obtaining seisine on deeds of entail - 385

Instrument of seisine on deed of entail - 387

——— upon bond, assignation, and disposition in security, by heir of tailzie - 388

TIT. X. Trust-Dispositions for behoof of Creditors, and Deeds of Accession thereto.

Observations on trust-deeds and deeds of accession 395

Trust-disposition - - 398

Variations, if a reservation of an aliment, and a power to value jointures - - 417

——— if with reservation of coal and salt works, and liferents to widows, and with power to provide for children - 418

Trust-disposition to accountants - 421

Deed of accession by creditors - 444

Variation in the clause of aliment therein 455

Observation on the solemnities thereof 457

Instrument of seisine on the first example of a trust-disposition 459

——— upon trust-disposition to accountants 464

TIT. XI. Charters by Progress of Subject-superiors, and Writings for consolidating Properties and Superiorities.

	Page
Observations	467
Charter of resignation	469
Observation on the solemnities of writings	472
Variations, if the charter proceeds on a tailzie	475
—— if the charter is granted by a commissioner	ib.
—— if to an assignee	476
—— if to an heir served and retoured	477
Charter to the crown presentee in a case of bastardy	478
—— in case of *ultimus haeres*	479
Clause of *novodamus*	480
Charter of adjudication	482
—— if on decreet of adjudication in implement	483
Charter on decreet of sale	484
Charter of confirmation	ib.
Variation, if containing precept of *clare constat*	486
—— if granted by a commissioner	488
Charter of confirmation, and precept of *clare constat* to an heir of tailzie	ib.
Precept of *clare constat*	494
—— in Latin	495
Observations if the superior refuse to enter the heir	497
—— on consolidating property and superiority	498

Procura-

Page

Procuratory of resignation in one's own favour *ad remanentiam*, for consolidating the property and superiority 499

Observations on precept of *clare constat* in one's own favour, and procuratory of resignation *ad remanentiam*, for consolidating the property and superiority 500

Precept of *clare constat* in one's own favour for consolidating the property and superiority 501

Variations, if having also procuratory annexed 505

Precept of *clare constat* to the heir in a right in security 507

Instrument of resignation in the hands of a subject-superior *in favorem* 511

Variation, if proceeding on a tailzie 513

——— if in the hands of a commissioner 514

——— if by an assignee 515

——— if by an heir having right by general service ib.

Instrument of seisine upon a charter of resignation of lands held of a subject superior 515

Variation, if the charter is granted by a commissioner 516

——— if upon a charter in a case of bastardy, or of *ultimus haeres* ib.

——— if a clause of *novodamus* 517

Instrument of seisine upon a charter of adjudication by a subject superior ib.

Variation, if in implement ib.

——— if on charter of sale 518

Instru-

Page

Inſtrument of ſeiſine upon a charter of confirmation and precept of *clare conſtat* - 518

Variation, if granted by a commiſſioner - 521

——— if in favour of an heir of tailzie - ib.

Inſtrument of ſeiſine upon a precept of *clare conſtat* 522

——— in Latin - 525

Inſtrument of reſignation in one's own favour, *ad remanentiam* - - - 526

Inſtrument of ſeiſine upon a precept of *clare conſtat* in one's own favours - - 528

Inſtrument of reſignation *ad remanentiam* upon procuratory annexed to ſaid precept - 529

Inſtrument of ſeiſine upon precept of *clare conſtat* to the heir in a right in ſecurity - 529

TIT. XII. Inveſtiture in Royal Boroughs, and others of a ſingular nature.

Obſervations - - 530

Inſtrument of ſeiſine on a diſpoſition to ſubjects within burgh holding burgage - 531

——— to an heir cognoſced by haſp and ſtaple 533

——— in favour of a purchaſer from the heir before entry - - 534

Obſervations on feu-rights within burgh ib.

——— on the method of election in boroughs 535

Obſer-

Page
Observations on ditto in the shire of Sutherland 536
——— on the right which ministers have in their manses and glebes ib.
——— on the tidal right in Orkney and Zetland 537
——— on the kindly tenant-rights of Lochmaben 538
Bond and disposition under reversion by a kindly tenant 539
Observations - - - - 546

Tit. XIII. Extinction of temporary and redeemable Real Rights.

Observations thereon - - 548
Renunciation of a liferent superiority - 549
Observations on extinction of wadsets - 552
Discharge and renunciation of a wadset 558
——— of a right of reversion - - 562
Observation on extinction of heritable securities accessory to personal obligations - 564
Discharge and renunciation of a bond and disposition under reversion - - 565
Appendix - - 571

TITLE I.

Of Diſpoſitions.

INTRODUCTION.

Origin of property.

THE idea of property proceeds from a principle of appropriation in the human mind. The houſe I inhabit, the walks I frequent, the ſpot of ground I cultivate, by long uſage, acquire a place in my affection; an unlimited power of uſing them naturally leads me to conſider them as mine, and entitled, if I ſhould think it proper, to transfer my right in them to another.

In the firſt ages of the world, if there was any idea of landed property, it would be very faint. Whilſt the earth was thinly inhabited, and mankind depended

for their ſubſiſtence on hunting, fiſhing, or on the fruits which the earth, with little culture, produced, and on paſturing flocks; when the grounds which they had firſt occupied were exhauſted of their fertility and verdure, they would roam about in queſt of others which remained in their primitive ſtate, and leave their former poſſeſſions to any perſon who inclined to take them. But, when every part of the then known world was occupied, agriculture became an object of greater attention, and reclaimed mankind from this wandering life; it cemented them together in ſociety to defend the ſpot to which the component parts of this ſociety were fixed, and made them extend the circle of their ſociety to a greater compaſs; to preſerve good order therein, government and laws were neceſſary. Some by conqueſt, and others by compact, became their leaders and judges. Men, being thus ſettled in ſociety, were induced to build houſes of a more permanent conſtruction than thoſe uſed for the ſhelter of a day, and, beſides making the ſpot to which they were fixed

as

as productive as poſſible for their ſubſiſtence, to the improving it in beauty and ornament for their pleaſure and amuſement. Theſe led to the more intimate connection of property in that field, and to the receiving a valuable conſideration for parting with it. The diſpoſal of it required to be attended with ſuch ſolemnities, and done in ſo public a manner, as to keep the fame in remembrance till the new proprietor had, by ſimilar acts of poſſeſſion, acquired the idea of property, and implanted it in the minds of others; and the former proprietor loſt all recollection of, or affection for the ſubject. Different memorials of theſe tranſactions may have been uſed at different times. But, ſince the art of writing became common, that, as the moſt ſatisfactory, has been adopted for the tranſmiſſion of property, the ſeller granting a conveyance in writing, completed by delivery of poſſeſſion, either real or ſymbolical, and a written inſtrument taken thereupon, atteſted by perſons worthy of credit preſent thereat, termed *charter and ſeiſine*. Public regiſters have likewiſe

Charter & ſeiſine. Regiſters.

likewiſe been eſtabliſhed for recording theſe tranſactions, to make them public, and to preſerve the writings from being loſt.

For the better underſtanding of the different forms of conveyance uſed in Scotland, it will be proper to mention the different tenures by which lands there are preſently held: Before entering into which, it may be obſerved, that, in the infancy of property, and even ſo late as in the Roman empire, lands were *allodial*, (i. e. held independent of any ſuperior), and that our preſent forms of conveyance of land derive their origin from thoſe uſed under the *feudal ſyſtem*, introduced by the Barbarians, who, pouring from the north like a torrent, overthrew the Roman empire, and ſubdued a great part of Europe; and that our different tenures, or manners of holding, are different modifications of the feudal tenure: The Kings who governed theſe Barbarians, in order to preſerve their conqueſts, having portioned out the lands to their principal commanders, to be held of themſelves for homage

Lands allodial.

Feudal ſyſtem.

and

and military ſervices, who again portioned out part of theirs to their followers for returns of a ſimilar nature; which political plan of keeping a ſtrong armed force conſtantly in the kingdom, ready to be called on any emergency, was ſoon followed by moſt of the Princes in Europe, who prevailed on their ſubjects to ſurrender their lands to them, and receive them back as a *beneficium* or gratuity, on condition of homage and military ſervice. The great men alſo gave out part of theirs to thoſe under them, or prevailed on perſons of ſmall eſtates to hold their lands of them for their protection in the ſame manner. The perſon making this beneficial grant was called the *ſuperior*; the perſon receiving it the *vaſſal*; the ſubject of the grant was termed the *feu*; the intereſt retained by the ſuperior in the feu was denominated *dominium directum*, or the *ſuperiority*; and that acquired by the vaſſal *dominium utile*, or the *property*. The writing which conſtituted the grant of the feudal ſubject, by the ſuperior to the vaſſal, was called a *charter*, whether, in the particular form of

Superior.
Vaſſal.
Feu.
Superiority.
Property.

of a charter, or of a diſpoſition or contract. Lands being thus received on the footing of a gratuity, according to the ſtrict feudal principles, the vaſſal could neither ſell, convey, nor burden the feu, without the ſuperior's conſent, leſt he ſhould have got a vaſſal in the lands unable or unwilling to ſerve him, or leſt his vaſſal, by diſpoſing of part of his feu, ſhould have been unable to defray the expence of attending his ſuperior to the wars. Accordingly, in that kind of holding termed *wardholding*, which approached neareſt to the ſtrict feudal holding, the vaſſal was liable in military ſervices; he could not alienate more than the half of the lands without incurring a forfeiture, termed *recognition*; he could not marry without the ſuperior's conſent, leſt he ſhould thereby have become connected with a family who were at enmity with the ſuperior; and the ſuperior was entitled to the rents during the minority of the heir, with which to provide himſelf in a perſon able to ſerve him in war; but if the heir had no ſeparate eſtate, the ſuperior was obliged to aliment him: The ſuperior was alſo entitled

Recognition.

Marriage.

Ward.

Relief.

to

to a year's rent more, if he was in poſſeſſion, or otherwiſe to the retoured duties for *relief* thereof out of his hands at the heir's attaining the age of majority; or to ſuch a ſum as the caſualties of marriage, ward, and relief, were taxed at. Upon the entry, therefore, of an heir, or conveyance of the lands to a third perſon, it was neceſſary to have a right from the ſuperior, before the heir or diſponee could be inveſted, which was alſo termed a *charter*; and to diſtinguiſh the one kind of charters from the other, that which was at firſt granted was termed an *original charter*, and the other a *charter by progreſs*. In place of this ſtrict holding for military ſervices, ſubject to ſo many caſualties and forfeitures, others of a civil or religious nature were afterwards accepted of, upon conditions more eaſy for the vaſſal; as *feu-holding* for a certain yearly duty in money or victual, nearly reſembling a leaſe, except that this was to perpetuity, and a leaſe only for a term of years; that this was completed by inſtrument of ſeiſine duly regiſtrate, and the other

Original charter.

Charter by progreſs.

Feu-holding.

ther by poſſeſſion. There are a few caſualties proper to this manner of holding; but they are much fewer, and of an eaſier nature than thoſe proper to ward-holding were. This kind of holding was introduced for the encouragement of agriculture; *blench-holding* for an eluſory yearly duty, and to which this condition is generally added, "if aſked allenarly," *(ſi petatur tantum)*; *burgage* (a tenure uſed only in tenements within royal boroughs) for watching and warding, ſimilar to ward-holding, except in its caſualties and forfeitures; *mortification*, for ſaying a certain number of maſſes, or for prayers and tears for the ſouls of the deceaſed; which religious ſervices were declared ſuperſtitious, and put an end to by the reformation in religion; ſince which time mortifications muſt be made by feu or blench-holding. The vaſſal, though he had only the *dominium utile*, could again feu his property to a ſub-vaſſal, and thereby raiſe a new *dominium directum* to himſelf, holding *immediately* himſelf of the firſt ſuperior, and his ſub-vaſſal *immediately* through him.

Blench-holding.

Burgage.

Mortification.

him. The act 20th Geo. II. *aboliſhing ward-holdings*, put a period to military ſervices; ſince which time the feudal ſyſtem may, in this kingdom, be conſidered as at an end, and the different holdings as little more than matters of form in making up titles to lands.

Wardholding aboliſhed.

Lands are held either of the King or Prince, or of ſubject ſuperiors. If held of the King or Prince, whether by blench or feu, lying within a ſhire or ſtewartry, and of the extent to be after taken notice of, they give a right to a vote in the election of a member of parliament, or what is termed a *freehold-qualification*; if within a royal borough, they are held of the King in burgage, the magiſtrates and council whereof are the electors. If held of a ſubject, it is by feu or blench tenure. Even the ſuperiority of lands will create a ſufficient qualification. The chief reaſon why the ſuperiority of lands without the property gives right to a freehold qualification, and that the property without the ſuperiority does not, ſeems to be, that the King cannot, in the eye of the

Lands held of the king or prince give right to a freehold qualification.

Superiority, and not property, gives right to a freehold qualification. The reaſon thereof.

law, be in the knowledge of the ſub-vaſſals in the lands, the only perſons known to him, and liable in the caſualties of ſuperiority, being his own vaſſals, whether under the name of barons, freeholders, or free tenants *, and who were obliged to give ſuit and preſence to the King as their feudal ſuperior, till the attendance of certain of the ſmaller barons was diſpenſed with, and they were allowed to ſend commiſſioners in their room †. The crown vaſſals alſo conſtituted the *pares curiae*, or peers, before whom, as the great council of the nation, every thing relating to the kingdom was tranſacted, and all cauſes among the vaſſals themſelves determined; the King, the greater Barons, or Lords, and the leſſer Barons, or Commons, having formed only one houſe in the Scottiſh parliaments. The ſub-vaſſals, on the other hand, owed ſuit and preſence to their own ſuperiors, who were alſo their judges, theſe ſubvaſſals, as *pares curiae*, conſtituting their

* *Liberi tenentes*, ſynonimous to freeholders.

† 1427, c. 101.—1457, c. 75.—1503. c. 78.—1587, c. 114.

their juries. The ſub-vaſſals, therefore, neither could give attendance in parliament, nor would wiſh to do it, as it was for a long time conſidered, by the ſmaller barons, as a burden rather than a privilege; inſomuch that, previous to the eſtabliſhment of their repreſentation by commiſſioners, very few of them could be prevailed on to attend. The attendance of the ſmaller barons, by commiſſioners or repreſentatives, and the repreſentatives of the royal boroughs forming apart of the parliament, being all refinements upon, or improvements of the political conſtitution or nature of parliament, and not original component parts of it, though ſtill adhering to the principles thereof; as alſo that of the Lords and Commons forming two houſes of parliament, which took place at an early period in England, from whence the Britiſh parliaments derived it.

Diſpoſition.

The conveyance of lands is moſt commonly executed in the form of a diſpoſition, though in ſome caſes by contract. Theſe diſpoſitions are granted the lands to be held either *a me from* the granter, *of* his

a me.

his ſuperior, ſometimes called holding *public*; or *de me*, *of* and under the granter himſelf, called alſo holding *private* or *baſe*; or, *a me et de me*, or either, as the diſponee may incline. The firſt of theſe three kinds contains a *procuratory of reſignation* *, but no *precept of ſeiſine* †, and is uſed in diſpoſitions of ſuperiorities, and in diſpoſitions of tenements within boroughs holding *burgage*; the ſecond contains a precept, but no procuratory, uſed in diſpoſitions of property, or feu-rights; and the laſt both procuratory and precept, where the property and ſuperiority are both intended to be conveyed. In lands held *a me*, the diſponee, in virtue of the procuratory, obtains

de me.

a me, et de me.

* By a *procuratory of reſignation*, is here meant a *procuratory of reſignation in favorem*, which is a mandate to a perſon or perſons to appear before the ſuperior, and reſign the lands to him, not with an intention that they ſhould remain with him, but that they may be again given by him to a third perſon the diſponee. *A procuratory of reſignation ad remanentiam*, is when the lands are intended to remain with the ſuperior.

† *A precept of ſeiſine* is the command of a ſuperior to his bailie, for giving ſeiſine or poſſeſſion to the vaſſal or his attorney, by delivery of the proper ſymbols; as earth and ſtone for the lands, &c.

tains a charter of reſignation, and infefts on the precept therein contained; in thoſe held *de me*, he infefts upon the precept of ſeiſine in the diſpoſition; in thoſe granted to be held *a me et de me*, he may either obtain a charter of reſignation and infeft thereon holding public, or may infeft ſimply upon the precept of ſeiſine in the diſpoſition holding baſe of the granter; in which laſt caſe, if he afterwards obtains from the ſuperior a charter of confirmation, it is conſidered as if it had been from the beginning a public right. Public. Baſe.

All theſe diſpoſitions contain,

1. The premiſſes.

2. The name and deſignation of the granter or diſponer.

3. The conſideration, or cauſe of granting, (which, if for a valuable conſideration, is ſaid to be onerous, if for love and favour, gratuitous); and the perſon to whom the grant or conveyance is made, or diſponee, ſometimes called the narrative or recital.

4. The diſpoſitive clauſe, in which the ſubjects made over are deſcribed, in which

is

is expreſſed the order of ſucceſſion, and limitation of the feu.

The deſcription of the ſubjects is commonly taken from a former diſpoſition or ſeiſine.

5. The obligation (or obligement) to infeft.

6. The tenendas (or holding.)

7. The reddendo (the return) the duty or ſervice to be paid or performed by the vaſſal to the ſuperior.

If the lands hold *public*, or *a me et de me*, then follows procuratory of reſignation before deſcribed.

8. Clauſe of warrandice (or warranty.)

9. Aſſignation to the rents.

10. Aſſignation to the writings, or title deeds.

11. Clauſe of delivery thereof, or obligation to make the ſame forthcoming.

12. Clauſe of regiſtration.

And here, if held *baſe*, or *a me et de me*, follows a precept of ſeiſine before defined.

13. Concluſion.

14. Teſting clauſe.

The two laſt mentioned clauſes go frequently by the name of *ſubſcription clauſe*.

In

In treating of the different conveyances before mentioned, I ſhall begin with a diſpoſition, containing obligement to infeft by two manners of holding, *a me et de me*, as being the moſt frequent in practice.

Diſpoſition of Lands.

Diſpoſition a me, et de me.

Be it known to all men by theſe preſents, *that* I, *A. B.* of C. heritable proprietor of the lands and others after diſponed, for a certain ſum of money inſtantly advanced and paid to me by *C. D.* in E. as the agreed worth and price thereof, whereof I grant the receipt, renouncing all objections in the contrary; *therefore have ſold, alienated*, and *diſponed*, as I hereby *ſell, alienate*, and *diſpone* from me, my heirs and ſucceſſors, *to* and *in favours* of the ſaid C. D. his heirs and aſſignees whatſoever, heritably and irredeemably, *all* and *whole* (take in the lands), together with all right, title, intereſt, claim of right, property, and poſſeſſion petitory or poſſeſſory, which I, my predeceſſors or authors, heirs

Premiſes.
Granter, or diſponer.
Conſideration.
Receiver, or diſponee.
Diſpoſitive clauſe.

heirs or ſucceſſors, had, have, or anyways may have, claim, or pretend thereto in time coming. *In* which lands and others foreſaid, with the pertinents, I bind and oblige me and my foreſaids, duly and validly, to infeft and ſeiſe the ſaid C. D. and his foreſaids; *and* that by two ſeveral infeftments and manners of holding, *the one* thereof to be holden of me, my heirs and ſucceſſors, in free blench, *for* payment of a penny Scots money, upon the ground of the ſaid lands, at the term of Whitſunday yearly, if aſked allenarly, and freeing and relieving me and my foreſaids of the duties payable forth thereof to our ſuperiors of the ſame; *and* the other of the ſaid infeftments to be holden from me of my immediate lawful ſuperiors thereof, as freely as I, my predeceſſors or authors, held, or might have held the ſame ourſelves, and that either by reſignation or confirmation, or both, the one without prejudice of the other; *and* for effectuating the ſaid infeftment by reſignation, *I* hereby *make* and *conſtitute*

Obligement to infeft.

Tenendas.

de me.

Reddendo.

a me.

Reddendo.

Procuratory of reſignation.

and each of them, jointly

jointly and ſeverally, my lawful and irrevocable procurators, for me, and in my name, *to reſign*, as I by theſe preſents *reſign*, *renounce*, *overgive*, and *deliver*, *all* and *whole* the lands and others before diſponed, lying, bounded, and deſcribed as aforeſaid, and here held as repeated *brevitatis cauſa;* together with all right, title, intereſt, I, or my foreſaids, have or can pretend thereto; *in the hands* of my immediate lawful ſuperiors thereof, or their commiſſioners having power to receive reſignations and grant new infeftments thereupon, *in favours*, and for new infeftments of the ſame, to be made and granted to the ſaid C. D. and his foreſaids, heritably and irredeemably, in due and competent form, acts, inſtruments, and documents upon the premiſſes to aſk and take, and generally every other thing thereanent to do that I could have done myſelf, if perſonally preſent, or that to the office of procuratory, in ſuch caſes, is known to pertain; all which I promiſe to hold firm and ſtable without revocation. *Which* diſpoſition above written, lands, and others thereby diſponed,

Warrandice.

diſponed, I bind and oblige me and my foreſaids, to warrant to the ſaid C. D. and his foreſaids, at all hands, and againſt all deadly, as law will; *and* to free and diſburden the ſame of all ceſs, miniſter's ſtipend, ſchoolmaſter's ſalary, taxations, and incumbrances whatever affecting the ſame, preceding the term of Whitſunday laſt; he and his foreſaids being bound and obliged to free and relieve me and my foreſaids thereof, in all time thereafter. *And further*, I hereby *make* and *conſtitute* the ſaid C. D. and his foreſaids, my lawful ceſſioners and aſſignees, *not only in* and *to* the rents, mails, and duties of the ſaid lands, from and after the ſaid term of Whitſunday laſt, and in all time coming: *But alſo in* and *to* the whole writs, evidents, and title-deeds, old and new, of and concerning the ſame, with the whole clauſes and obligements therein contained, and all that has followed or may follow thereon; ſurrogating and ſubſtituting the ſaid C. D. and his above written, in my full right and place of the premiſſes, with power to them to do every thing thereanent,

Relief of public burdens.

Aſſignation to the rents,

and to the writs.

anent that I could have done before granting theſe preſents; which I oblige me to warrant as follows, viz. in ſo far as concerns the ſaid writs and evidents at all hands, and, as to the rents, mails, and duties, from my own fact and deed allenarly. *And*, having herewith delivered up to the ſaid C. D. the whole original writs of the ſaid lands in my cuſtody, conform to inventory thereof, ſubſcribed by me of this date: *I conſent* to the regiſtration hereof in the books of Council and Seſſion, or others competent, therein to remain for preſervation, and, if needful, that letters of horning on ſix days charge, and all other execution neceſſary, in form as effeirs, paſs hereon, and thereto *conſtitute* my procurators; *attour*, to the effect the ſaid C. D. may be immediately infeft and ſeiſed in the ſaid ſubjects, *I hereby deſire* and *require* you and each of you, conjunctly and ſeverally, my bailies in that part ſpecially conſtitute, that, on ſight hereof, ye paſs to the ground of the ſaid lands, and others foreſaid, and there give and deliver

Delivery of the writs.

Regiſtration.

Precept of ſeiſine.

liver to the ſaid C. D. heritable ſtate and ſeiſine, actual, real, and corporal poſſeſſion, of *all* and *whole* the lands and others before diſponed; all lying, bounded, and deſcribed in manner before mentioned, by deliverance to him, or his certain attorny, or attornies, in his name, bearers hereof, of earth and ſtone of the ground of the ſaid lands reſpectively to be holden in manner foreſaid. And this in nowiſe ye leave undone. The which to do I commit to you, and each of you, my full power by this my precept of ſeiſine, directed to you for that effect. *In witneſs whereof*, I have ſubſcribed theſe preſents, (written upon this and the preceding pages of ſtamped paper by writer in) at the day of one thouſand ſeven hundred and eighty years, before theſe witneſſes and

Concluſion and teſting clauſe; or ſubſcription clauſe.

Variations.

— if alſo of teinds. 1. If the granter of this diſpoſition has alſo right to the teinds, and means to diſpoſe

poſe of them, the diſpoſition will ſuffer a ſmall variation; after the granter's name and deſignation, it will be, "proprietor of the lands, teinds, and others after diſponed;" and, in place of "lands and others," "lands, teinds, and others," throughout; and in the precept of ſeiſine, after the words "earth and ſtone of the ground of the ſaid lands," add, "a handful of graſs and corn for the ſaid teinds."

— if of mills.

2. If there is a mill upon the ſaid lands, it will be, "lands, mills, and others;" and, in the precept of ſeiſin, the ſymbol of infeftment is, after mentioning earth and ſtone for the lands, "clap and hopper for the ſaid mill."

— if of a ſalmon fiſhing.

3. If a ſalmon fiſhing is conveyed, "lands fiſhings, and others," and the ſymbol for infeftment is, "net and coble."

— if of a right of patronage.

4. For a right of patronage, a Pſalm book and the keys of the church are uſed for ſymbols.

— if with conſent of the diſponer's wife.

5. If it is granted with conſent of the diſponer's wife, who is ſecured in a jointure, it will run thus: "proprietor of the lands and others after diſponed, with the

the ſpecial advice and conſent of M. H. my ſpouſe, and I the ſaid M. H. for all right of liferent, annuity, or other proviſion, to which I, or my heirs, have right, or may be entitled to out of the ſaid lands, with conſent of my ſaid huſband, and we both with one conſent, and I the ſaid A. B. as taking burden upon me for my ſaid ſpouſe."

— if by a wife with conſent of her huſband.

6. If by a wife of her lands, with conſent of her huſband, it will be, "with the ſpecial advice and conſent of the ſaid A. B. my huſband. And we both, with mutual conſent and aſſent." In this caſe the diſpoſition ſhould be judicially ratified, by the wife compearing before a judge, out of the preſence of her huſband, and making oath that ſhe is not compelled to the granting thereof; whereupon a notorial inſtrument may be taken. There is alſo in theſe diſpoſitions a clauſe generally inſert before the clauſe of regiſtration, to this purpoſe. "And further, we the ſaids M. H. and A. B. bind and oblige us, that I the ſaid M. H. ſhall ratify the ſaid diſpoſition judicially,

dicially, without the preſence of my ſaid huſband."

7. If the diſpoſition is granted by a truſtee, and for behoof of creditors, in conſequence of articles of roup, the narrative will be in theſe terms. "Be it known to all men by theſe preſents, me A. B. writer in as having right to the ſubjects after diſponed in truſt for G. H. of I. and his creditors, conform to truſt diſpoſition in my favours, dated the day of and inſtrument of ſeiſine following thereon, dated the day of and recorded in the particular regiſter of ſeiſines for the ſhire of the day of thereafter; (or, "in the general regiſter of ſeiſines kept at Edinburgh), &c. *Whereas*, by articles of roup, bearing date the day of I expoſed to public roup and ſale, the heritable ſubjects which belonged to the ſaid G. H. in different lots; at which roup, C. D. merchant in E. offered L. for the third lot, being (deſcribe it); bounded in manner after mentioned, and being the laſt and higheſt offerer for ſaid lot, he was by the judge preferred thereto: And thereby enacted,

— if by a truſtee, and for behoof of creditors.

Premiſes.

Granter.

Narrative.

nacted, bound, and obliged himſelf to pay the price, in terms of the ſaid articles of roup, as the ſame more fully bear. *And now, ſeeing* the ſaid C. D. has made payment to me of the foreſaid ſum of whereof I hereby grant the receipt, renouncing all objections to the contrary: *Therefore* to *have ſold* and *diſponed*, as I the ſaid A. B. as truſtee foreſaid, in implement of the ſaid articles of roup, hereby, &c." (*Obligement to infeft, procuratory of reſignation, warrandice* of the diſpoſition and lands, from fact and deed only, *aſſignation to the writs*, "and whole clauſes of warrandice, and other clauſes therein contained;" and to the rents, from and after the term of "*Surrogating*, &c. *which* aſſignation I bind and oblige me to warrant from my own proper facts and deeds, done or to be done, in prejudice hereof;" *clauſe of delivery of the writs*, regiſtration, precept of ſeiſin, clauſe of ſubſcription).

Subſumption.

Diſpoſitive.

— if on a different narrative.

8. Sometimes the valuable conſideration, or cauſe of granting, is different from "a ſum of money inſtantly advanced:" As for

for example, if the eldeſt ſon, being burdened with a ſum to a younger ſon, ſhould give him a diſpoſition to lands in ſatisfaction thereof, the narrative would be,

Be, &c. me —— eldeſt lawful ſon and heir of the deceaſed —— *Whereas* —— my brother-german has, of this date, granted to me a diſcharge of the ſum of —— of principal and annualrent due thereon, contained in a bond of proviſion granted to him by my ſaid deceaſed father, *and* alſo an aſſignation to his ſhare of my father's executry, to which he is alſo provided by the ſaid bond, which I accept of as equivalent to the lands and others after diſponed; *Therefore*, to have ſold, &c.

In general diſpoſition.

9. A diſpoſition of a particular ſubject may be contained in a general diſpoſition, either granted to take place *eventu mortis*, or upon the act of grace, or the like, in which caſes, after the general conveyance, ſay, " And particularly without prejudice " to the generality foreſaid, I hereby give, " grant, and diſpone," (if for favour and affection, and if for other cauſes, " for the cauſes foreſaid, diſpone, and make over,")

and go on in the ordinary ſtile of a diſpoſition to the words, "*ſurrogating and ſubſtituting*," in the end of the aſſignation, to the rents and writs, and take in what follows theſe words in a general diſpoſition; then follows the clauſe of delivery of the writs, regiſtration, precept of ſeiſine, concluſion, and teſting clauſe, or clauſe of ſubſcription.

Examples of deeds granted *eventu mortis* will be given in their proper place.

—in liferent.

A liferent diſpoſition of lands *diſpones* to the receiver *during all the days of his life*; contains *obligement to infeft* in common form, *procuratory of reſignation*, *clauſe* of abſolute warrandice, *aſſignation* to the mails and duties from a certain period, clauſe of *regiſtration* and *precept of ſeiſine*; in which, in place of "*heritable ſtate and ſeiſine*", ſay "*liferent* ſtate and ſeiſine, &c."

—of lands principal and in warrandice.

Sometimes where the progreſs is not ſufficiently clear, or the lands perfectly purged of incumbrances, other lands are ſometimes diſponed, in warrandice of thoſe principally diſponed; in which caſe add to the diſpoſitive clauſe of the lands principally diſponed, "and theſe for the principal;"

" pal ;" then ſay, " and alſo all and whole,
" (here inſert the warrandice lands) in ſpe-
" cial and real warrandice, and ſecurity of
" the lands and others above ſpecified
" principally diſponed ; ſo that, if it ſhall
" happen the ſame, or any part thereof, to
" be evicted by order of law from the ſaid
" C. D. or his foreſaids, through any de-
" fect of the title of me the ſaid A. B. to
" the ſame, or by any fact or deed of me,
" my predeceſſors, or authors, or yet him
" or them to be ſtopped or hindered in the
" peaceable poſſeſſion of the ſaid lands and
" others principally diſponed : That then
" and in that caſe, the ſaid C. D. and his
" foreſaids ſhall have full and free ingreſs
" and acceſs in and to the property and
" poſſeſſion of ſo much of the lands and
" others above ſpecified, diſponed in war-
" randice, as ſhall be equal in worth and
" value, and correſpond in quantity, qua-
" lity, and yearly rent, to the whole or
" ſuch parts of the lands and others princi-
" pally diſponed, or any annualrent forth
" of the ſame, that ſhall happen to be ſo
" evicted ; to be from thenceforth peace-
" ably enjoyed and poſſeſſed by the ſaid
" C.

"C. D. and his foreſaids, as their proper-
"ty until they ſhall be reponed and reſto-
"red to the peaceable poſſeſſion of the
"lands principally diſponed, and the ſame
"diſencumbered and freed from the ſaid
"eviction." In the procuratory of reſig-
nation it may be ſhortly ſaid, "all and
"whole the ſaid lands and others with the
"pertinents, principal, and in warrandice,
"particularly before diſponed, &c." And
in the precept of ſeiſine, "give and deliver
"heritable ſtate and ſeiſine, actual, real, and
"corporal poſſeſſion of all and whole the
"ſaid (inſert the lands principally diſpo-
"ned) lying and deſcribed in manner be-
"fore mentioned, and theſe for the princi-
"pal; and alſo of all and whole the ſaid
"(inſert the warrandice lands) in ſpecial
"and real warrandice and ſecurity of the
"lands and others above ſpecified, princi-
"pally diſponed, in the event above writ-
"ten."

—Where the granter has not got his titles made up. Premiſes. Granter.

It ſometimes happens that the perſon making a diſpoſition, has not got proper titles eſtabliſhed in his perſon, to the ſubjects to be diſponed, in which caſe it will be as follows: *Be*, &c. me C. B. of E. eldeſt

eldeſt lawful ſon, and apparent heir of the deceaſed A. B. of E. *Whereas*, C. D. in has inſtantly advanced, &c. *Therefore wit ye* me to have *ſold* and *diſponed*, as I, by theſe preſents, ſell, alienate, and diſpone to, and in favour of the ſaid C. D. his heirs and aſſignees whatever, heritably and irredeemably, All and whole, (deſcribe the lands) together with all right, title, and intereſt that I, my predeceſſors, or authors, heirs, and ſucceſſors, had, have, or any ways may claim, or pretend thereto in time coming; *And* in regard, the fee of the ſaid lands, and pertinents thereof, is not actually veſted in my perſon by infeftment:— Therefore I bind and oblige me, on my own proper charges and expences (or, if it is agreed ſo, "on the expences of the ſaid "C. D.") to procure myſelf ſerved and retoured as heir in ſpecial to my ſaid deceaſed father, or to any other of my predeceſſors who died laſt veſt and ſeiſed in the fee thereof; and as ſuch, to obtain myſelf infeft and ſeiſed in the ſame; and being ſo infeft, I oblige myſelf, my heirs and ſucceſſors, to infeft and ſeiſe the ſaid C. D. and his foreſaids, on their own proper charges and

Conſideration.

Diſpoſitive.

Obligation by the Granter to procure himſelf ſerved heir inſpecial.

Obligement to infeft.

and expences, in the ſaid lands and others foreſaid, with the pertinents; and that by two ſeveral infeftments, &c. (to the words "*and for*;" and then in place of *effectuating*, &c. and the common procuratory of reſignation, take in what follows,) *And* for the ſaid ends and purpoſes, I hereby make and conſtitute and each of them jointly, and ſeverally, my lawful and irrevocable procurators, for me, and in my name, to purchaſe brieves forth of the chancery for obtaining me ſerved and retoured heir in ſpecial to my ſaid deceaſed father, or to any other of my predeceſſors, who died laſt veſt and ſeiſed in the fee of the ſaid lands, to cauſe proclaim the brieves, expede the ſervice, and take inſtruments thereupon, retour the ſame to the chancery, and afterwards procure precepts therefrom, and all other writs neceſſary for infefting me accordingly; take the infeftment, regiſter the ſeiſine, and do every thing concerning the ſame I might do myſelf, if I were preſent: *And* my title being ſo eſtabliſhed, I *authoriſe* and *empower* my ſaid procurators, jointly and ſevarally, to reſign and ſurrender, as I by theſe

Procuratory for ſerving heir in ſpecial.

Procuratory of reſignation.

theſe preſents, now as then, and then as now, *reſign*, *give up*, and *ſurrender* all and whole the ſaid lands with the pertinents, lying in manner foreſaid, and here held as repeated *brevitatis cauſa*, together with all right, title, and intereſt that I, my predeceſſors, or authors, heirs, or ſucceſſors, had, have, or any ways can claim or pretend thereto in time coming, *In the hands* of my immediate lawful ſuperiors thereof, or their commiſſioners, having power to receive reſignations, and grant new infeftments; *In favour*, and for new infeftments thereof to be made, given, and granted to the ſaid C. D. his heirs and aſſignees whatſoever, heritably and irredeemably, in due and competent form: Acts, inſtruments, &c. (and ſo on to the end, with common precept of ſeiſine).

If the diſponer's predeceſſor had procured a charter or diſpoſition, whereupon he might have been infeft, but did not take infeftment in his lifetime, his heir may obtain himſelf ſerved *heir in general*, which gives him right to every ſubject which either does not require infeftment, or on which infeftment has not followed, and

may

may be thereupon infeft, and afterwards diſpone, or may aſſign his right by diſpoſition and aſſignation. For *diſpoſitions* and *aſſignations*, ſee next title.

In the example of a diſpoſition given, both the ſuperiority, or *dominium directum*, and the property *, or *dominium utile*, are conveyed; and, if the lands hold of the king or prince †, upon reſignation in the hands

* Though the word *property* is commonly uſed in this ſenſe, it is not ſo always; thus, in the act 1681, c. 21. 'None ſhall have vote but who ſhall be publicly 'infeft in property or ſuperiority,' it means *undivided property and ſuperiority*. It is alſo oppoſed to temporary rights.

† *The Prince of Scotland* has an appanage or patrimony, conſiſting of lands lying moſtly in the ſhires of Air, Renfrew, Bute, and Roſs, granted by Robert III. It has been long erected into a regality juriſdiction called *the principality*. It is perſonal to the King's eldeſt ſon, upon whoſe death or ſucceſſion it returns to the crown. The Prince has, or may have, his own chancery, from which his writs iſſue, and may name his own chamberlain and other officers for receiving and managing his revenue. The vaſſals of the Prince are entitled to elect or be elected members of parliament for counties, equally with thoſe held of the crown, and this though there be no Prince exiſting at the time. 1489. c. 1. 1681. c. 20. 25. Geo. II. c. 20.

hands of the barons of Exchequer, in virtue of the procuratory of reſignation therein contained, a charter of reſignation will be obtained: And if the lands are of ſufficient extent to give a qualification to vote for a member of parliament, that is, a 40s. land of old extent, inſtructed by a retour prior to the 16th September, 1681, or L. 400. Scots of valuation, the diſponee may claim to be enrolled as a freeholder, on infeftment taken and recorded a year prior to the enrolment: If he wiſhes to be enrolled at the meeting of the freeholders, and commiſſioners of ſupply, held yearly at Michaelmas, he muſt lodge his claim with the ſheriff or ſtewart clerk, two months previous to the meeting *: But if, at a meeting for election of a member, he may, without lodging any previous claim, bring his titles in his hand, and claim to be enrolled. If the diſponee has no intention of this kind, he takes infeftment upon the precept of ſeiſine, in the diſpoſition, holding *de me* of the granter, *or baſe*, and may at any time afterwards reſign on the unexe-

* 16. Geo. II. c. 11.

cute procuratory of reſignation, or procure a charter of confirmation, which draws back to the date of the precept of ſeiſine, and makes it a public right from that date. But, in caſe he intends to be enrolled hereon, he muſt allow a year to elapſe after the charter is expede, and has paſſed the ſeals, before he can be enrolled.

Where the proprietor* wiſhes to convey only the ſuperiority of his lands, and the diſponee to be entitled to a freehold qualification thereon, he grants a diſpoſition of his lands in feu to his agent, or one of his friends, to ſeparate the property from the ſuperiority, and then executes a diſpoſition, the lands to be holden *a me* of his Majeſty, as immediate ſuperior thereof, with the exception of all feu-rights or rights of property of the lands granted prior thereto; or, after ſeparating the property from the ſuperiority, takes out a charter of reſignation, upon a ſimple procuratory of reſignation executed by him in favour of himſelf, his heirs, and aſſignees, and grants an aſ-

ſignation

* By proprietor is here meant a perſon poſſeſſed of an undivided property and ſuperiority, though it is often uſed for a perſon poſſeſſed only of the property.

ſignation to it ſo far as concerns the lands, the ſuperiority whereof is meant to be conveyed. Thus, if a perſon having two ſons is veſted in the property and ſuperiority of lands which entitle him to a freehold qualification, and wiſhes to give the property to one of them, and the ſuperiority to the other, either of theſe methods will anſwer the end: But an aſſignation to a charter obtained of an undivided property and ſuperiority, the granter reſerving therein the property to himſelf, was determined not ſufficient; as a ſubaltern right could not be eſtabliſhed by a ſimple reſervation *. The neceſſity of ſeparating the property from the ſuperiority is alſo neceſſary in another caſe; in the caſe of heirs-portioners, the eldeſt will be entitled to a ſingle ſuperiority, by which her huſband, in her right, will be entitled to vote, as will alſo her heir. But, in the caſe of an undivided property and ſuperiority, the eldeſt has no ſuch privilege; ſhe has only a right to an equal ſhare of the undivided property

* 1759, Elliot, *contra* Shaw and Oliver.

property and ſuperiority *, which is a hard caſe as to the ſuperiority, as by theſe means the freehold is loſt to the family, and yet, on feudal principles, it cannot be otherwiſe. It is clear, however, a freehold, even in this caſe, may be again created, by all parties concurring in feuing out the property, and afterwards diſponing the ſuperiority to the huſband of one of the heirs-portioners, either to him and his heirs, or in liferent. It might be thought it would be ſufficient to diſpone to one of the heirs-portioners, and that her huſband and heir would thereby have a right: But this is not ſo very clear, as, by Act 12*mo Annæ*, 'it is expreſsly provided that huſbands ſhall have 'no vote at any enſuing election, by 'virtue of their wives infeftments, who 'are not heireſſes, or have not right to the 'property of the lands, on account whereof ſuch vote ſhall be claimed.' Which is

* Nov. 10. 1747, Freeholders of the ſhire of Berwick, *contra* Primroſe. March 6. 1760, Sir Michael Stewart, *contra* Capt. Pollock.

Though this is the caſe, in a political view, ſhe has a right to the principal dwelling houſe and garden, as a *praecipuum*.

is held to exclude huſbands voting upon lands which their wives do not enjoy as heireſſes, or by the courſe of legal ſucceſſion, but by ſingular titles or purchaſe, the courteſy not extending to theſe lands *: *Property* alſo here being underſtood as oppoſed to a liferent-right in the wife. Where a perſon has an extenſive eſtate, and wiſhes to create as many freehold qualifications as his eſtate will ſplit into, he may either grant diſpoſitions in the common form uſed when both property and ſuperiority are conveyed, containing a proviſion or obligation on the diſponees, ſo ſoon as they have completed their rights to the lands as immediate vaſſals of the crown, to reconvey the property to be held feu of themſelves for a ſmall feu-duty, and the caſualties of ſuperiority to be taxed to ſmall eluſory ſums; as, in that caſe, there is no obligation on the diſponee's claiming to be enrolled, other than appears from their own titles †; or, he may grant as many feu-

* Feb. 1. 1781, Sir John Paterſon, *contra* John Ord.

† January 9. 1755, Forreſter and others, *contra* Fletcher and others.

feu-rights thereof, in favour of a third party, as he intends to create of qualifications, to ſeparate the property from the ſuperiorities; and afterwards take out a charter of reſignation in his own favours, and grant conveyances to different perſons of the ſeveral lands ſo feued out *. As temporary rights are ſufficient qualifications, if not dependent on the life or will of another perſon, theſe conveyances may be granted to perſons on liferent, or in the form of wadſets. For which ſee the following titles upon *Diſpoſitions and Aſſignations*, and Wadſets.

Feu-right. The form of a feu-right, or diſpoſition, may be as follows.

Diſpoſition of Lands holding Feu.

Premiſes. Granter. Conſideration. *Be it known* to all men, by theſe preſents, *me* A. B. Eſq; of C. *for* a certain ſum of money, advanced and paid to me by C. D. in E. in conſideration of my granting

* Nov. 15. 1766, Earl Panmure and others, *contra* Commiſſioners of Supply for the county of Forfar. Affirmed on appeal, Feb. 10. 1767.

granting hereof: *To have ſold, alienated,* and *diſponed,* and in feu-farm and heritage, to have *given out,* and *demitted;* as I, by theſe preſents, *ſell, alienate,* and *diſpone,* and in feu-farm and heritage *give out,* and *demit* to, and in favour of, the ſaid C. D. his heirs or aſſignees whatſoever, heritably and irredeemably, *all* and *whole* (deſcribe the lands), together with all right, title, or intereſt I have, or can pretend, to the property of the ſaid lands and others above diſponed in time coming; and I bind and oblige me, my heirs and ſucceſſors, duly and validly to infeft and ſeiſe the ſaid C. D. and his foreſaids, in the ſaid lands and others foreſaid, with the pertinents; *to be holden of me,* and my foreſaids, in feu-farm, fee, and heritage, for ever; *for* the yearly payment of ten ſhillings Scots, for the lands and others above mentioned, and that at the term of Martinmas, in name of feu-farm, beginning the firſt term's payment of the ſaid feu-duty at the term of Martinmas, in the year one thouſand ſeven hundred and eighty ——— years, and ſo furth yearly thereafter; and doubling the feu-duty the firſt

Diſpoſitive.

Obligement to infeft.

Tenendas.

Reddendo.

firſt year of the entry of each heir to the ſaid lands allenarly, for all other burden, exaction, or demand whatever. *And further*, I by theſe preſents not only *aſſign*, *transfer*, and *diſpone* to, and in favour of, the ſaid C. D. and his foreſaids, the whole writs, rights, evidents, and ſecurities whatſoever, of and concerning the property of the ſaid lands and others above diſponed, with the whole clauſes of warrandice, and other clauſes, tenor, and contents thereof; *but alſo*, I hereby *make*, *conſtitute*, and *ordain*, the ſaid C. D. and his foreſaids, my lawful ceſſioners and aſſignees, in and to the rents, mails, farms, profits, and duties of the lands and others above diſponed, for the preſent crop and year one thouſand ſeven hundred and eighty ——, and for all years and terms thereafter; and in and to the ſtanding tacks of the ſaid lands and tack-duties therein contained, for ſaid crop one thouſand ſeven hundred and eighty ——, and in time coming, during the ſubſiſtence of the ſaid tacks, and to penalties, termly failzies, and whole clauſes, conditions, and obligements therein contained; and in and to all action, diligence, and execution, competent,

Aſſignation to the writs and rents.

competent, or that may be competent, upon the premiſes, and all that has followed, or may follow thereon: *Surrogating* and *ſubſtituting* the ſaid C. D. and his foreſaids, in my full right and place of the premiſes above aſſigned forever: *And* I *bind* and *oblige* me to warrant the preſent feu-right and diſpoſition, and the infeftment to follow hereon, to be good, valid, and ſufficient, to the ſaid C. D. and his foreſaids, at all hands, and againſt all deadly, as law will; *as alſo*, to warrant, free, and relieve the ſaid C. D. and his foreſaids, of and from all blench and teind duties, miniſters ſtipends, ſchoolmaſters ſalary, ceſs, ſtents, taxations, and all other duties and burdens whatſoever, due and payable forth of the lands above diſponed, at and preceding the term of Whitſunday, in the preſent year one thouſand ſeven hundred and eighty ——: The ſaid C. D. and his foreſaids, being always obliged to free and relieve me of the ſaid duties and burthens in all time thereafter. Conſenting to the regiſtration hereof in the books of Council and Seſſion, or other Judges books competent, therein to remain for preſerva-

Warrandice.

Relief of public burdens, &c.

Regiſtration.

tion, and, if needful, to have the ſtrength of a decreet interponed thereto, that all execution neceſſary in form, as effeirs, may paſs herein; and thereto I *conſtitute* my procurators.

Precept of ſeiſine. *Moreover*, I hereby deſire and require you and each of you, conjunctly and ſeverally, my bailies in that part, to the effect after ſpecified, ſpecially conſtituted, That, immediately on ſight hereof, ye paſs to the ground of the ſaid lands and others foreſaid, and there give and deliver heritable ſtate and ſeiſine, actual, real, and corporal poſſeſſion, of all and whole the ſaid lands and others foreſaid, with the pertinents thereof, lying in manner above mentioned, to the ſaid C. D. and his foreſaids, by deliverance to him or them, or his or their certain attorney or attorneys, in his or their names, bearers hereof, of earth and ſtone of the ground of the ſaid lands, and all other ſymbols uſual and requiſite; and this in nowiſe ye leave undone: The which to do, I commit to you, and each of you, conjunctly and ſeverally, my full power by

by this my precept of seisine, directed to you for that effect. *In witness*, &c.

Conclusion, &c.

A disposition of lands holding blench is sometimes used for the purpose of separating the property and superiority, and creating a right of property; which may be easily framed from the foregoing examples.

—of lands holding blench.

The above form will also answer when the property is intended to be conveyed, and the granter means to reserve the superiority to himself.

A *feu-charter* is of the same nature, and may be in these terms.

Feu-charter.

Feu-charter.

To all and *sundry* to whose knowledge these presents shall come, I A. B. Esq; of C. heritable proprietor of the lands, and others after mentioned, for the sum of —— instantly advanced, and paid to me by C. D. in E. whereof I grant the receipt, renouncing all objections to the contrary; *have given*,

Premises.
Granter.
Consideration.
Receiver.

Diſpoſitive, *given*, *granted*, *alienated*, and *diſponed*, and in feu-farm let and demitted, as I hereby *give*, *grant*, alienate and diſpone, and in feu-farm *let* and *demit* to and in favour of the ſaid C. D. his heirs and aſſignees whatſoever, heritably and irredeemably, *all* and *whole*, &c. (inſert the lands), together with all right, title, and intereſt whatever, which I have, or can pretend to the property of the ſaid lands, and others above

Obligation to infeft. diſponed. *In which* lands and others above diſponed, I bind and oblige me, my heirs and ſucceſſors, duly and lawfully to infeft, and ſeiſe the ſaid C. D. and his foreſaids, *to be holden*, and for to hold the ſame of me the ſaid A. B. my heirs and ſucceſſors whatſoever, in feu-farm, fee, and heritage for ever; *for* the yearly payment to me and my foreſaids, of the ſum of —— ſhillings Sterling of feu-duty, at two terms in the year, Martinmas and Whitſunday, by equal portions; and doubling the ſaid feu-duty the firſt year of the entry of each heir to the ſaid lands, as uſe is, of feu-farm, and paying for the entry of a ſingular ſucceſſor in the ſaid lands —— and that for all other burden, exaction, or ſecular

Tenendas.

Reddendo.

ſervice

ſervice whatever, payable by the ſaid C. D. and his foreſaids, out of the ſaid lands and others foreſaid, (*Clauſe of warrandice,*) of the lands, with this preſent right and feu-charter at all hands; *obligation of relief of public burdens; aſſignation to the writs and rents;* warrandice of both, firſt abſolute, the other from fact and deed; *clauſe of delivery of the writs,* or *obligation to make them forthcoming*; regiſtration for preſervation and execution; precept of ſeiſine in common form. Then follows ſubſcription clauſe in theſe terms; *in witneſs* whereof, I have ſubſcribed theſe preſents, (written upon this and the —— preceding pages of ſtamped vellum, by ——), and have ordered my proper ſeal to be hereunto appended. At —— the —— day of —— one thouſand ſeven hundred and eighty years, before theſe witneſſes —— and ——).

Warrandice, &c.

Theſe feu-rights, ſtrictly ſpeaking, are almoſt the only original charters preſently uſed in practice.

It may be doubted how far the ſtamped vellum or parchment to be got at preſent and uſed for ſeiſines, charters of reſignation, confir-

Obſervation.

confirmation, novodamus upon adjudications, and of lands holding burgage, is good for this purpoſe; as by ſtatute 23d Geo. III. it pays only 4 s. 9 d. of ſtamp-duty, and that requiſite to deeds 5 s. *feu-charters* not being included among thoſe paying the 4 s. 9 d. duty. This kind of vellum or parchment was ſufficient before the ſaid ſtatute, 23d Geo. III. the duty on ſeiſines, charters of reſignation, &c. being, till that period, higher than that on paper or parchment uſed for deeds; it being always allowable to write on parchment or paper paying a higher duty than that required by law, but not on ſuch as paid a lower duty: It will therefore probably be more convenient to make uſe of feu-rights in the form of *diſpoſitions*, which are written on ſtamped paper, than of ſuch feu-charters.

Feu-contracts.

Rights to tenements within burghs of barony, or country villages, held of ſubject-ſuperiors, are conſtituted by feu-rights, which are generally in the form of contracts between the granter and receiver: But it would be taking up your attention from the conſtitution of freehold-qualifi-

cations,

cations, and other heritable rights of more important ſubjects, to conſider them in this place; I muſt therefore refer the reader to FORMS OF WRITINGS lately publiſhed, where he will find *feu-contracts, conveyances thereof*, &c. fully treated of.

Where feu-rights are granted for ſeparating the property from the ſuperiority, the perſon to whom the feu-right is granted may, before infeftment, reconvey the ſame to the granter; but this reconveyance falls more properly to be treated of in the next title of *Diſpoſitions and Aſſignations.* Reconveyance.

Where the feu-right has been granted for the purpoſe of veſting the diſponee, heritably and irredeemably, in the property for a price paid, or at leaſt for the uſe of the diſponee himſelf, and he accordingly infefts thereon, an after diſpoſition by him will go on exactly as in the firſt example of a diſpoſition. After diſpoſition.

If by the heir, a procuratory for ſerving him heir in ſpecial to his predeceſſor might be neceſſary, which would go on as in the example given, to the words "*and afterwards*;" and then, in place of "procure precepts If by the heir.

precepts therefrom," it would be "*procure charters, precepts of clare conſtat, and other writs neceſſary*, &c. And if the ſuperior refuſe to enter him, on bill to the Lords of Council and Seſſion, they will iſſue horning againſt him; and, if he diſobey the charge, the ſame againſt his ſuperior, and ſo upwards to the King, who refuſes nobody who applies by ſignature: The ſuperiors thus refuſing thereby loſing the caſualties of non-entry during their lives. But, although the lands may be thus held of the King *ſupplendo vices* of the ſubject-ſuperior, the ſub-vaſſal will not thereby be entitled to be enrolled, nor the immediate ſuperior prevented from being ſo *.

If the ſuperior refuſe, horning will be iſſued againſt him.

For theſe *precepts of clare conſtat*, and *charters* by ſubject-ſuperiors, ſee *title* on *Charters by Progreſs*.

—*of Superiority.*

Diſpoſition of Superiority.

Granter, Conſideration.

I, A. B. Eſq; of C. ſuperior of the lands and others after diſponed, *for* certain onerous

* 1780, Earl Fife, and Sir James Duff, *contra* Sir John Sinclair.

rous cauſes, by theſe preſents, *ſell*, *alienate* *, and *diſpone*, to and in favour of C. D. in E. his heirs or aſſignees whatſoever, heritably and irredeemably, *all* and *whole*, &c. (narrate the lands), together with all right, title, and intereſt I have, or can pretend thereto. *In which* lands, with the pertinents above diſponed, I *bind* and *oblige* me, my heirs and ſucceſſors, duly and lawfully to infeft and ſeiſe the ſaid C. D. and his foreſaids, upon their own proper charges and expences; *to be holden* from me, my heirs and ſucceſſors, of our Sovereign Lord the King's Majeſty, my immediate lawful ſuperior thereof, in the ſame manner, and as freely as I hold, or might have holden, the ſame myſelf, and that by reſignation in manner under-written; *and* for that effect *I* hereby *make* and *conſtitute*

Diſpoſitive, and Receiver.

Obligement to infeft.

Tenendas a me.

Procuratory of reſignation.

and each of them, my lawful and irrevocable procurators, to reſign, as I hereby reſign, renounce, ſurrender, upgive, overgive, and deliver, all and whole the

G ſaid

* If to a ſon gratuitouſly, "for love, favour, and affection, *give*, *grant*, and *diſpone*," &c.

ſaid lands, and others above diſponed, lying and deſcribed as aforeſaid, and here held as repeated *brevitatis cauſa*; together with all right, title, and intereſt I have, or can pretend thereto; *in the hands* of our Sovereign Lord the King's Majeſty, my immediate lawful ſuperior thereof, or of his commiſſioners, having power to receive reſignations, and grant new infeftments thereupon, *in favour*, and for new infeftments of the ſame, to be made and granted to the ſaid C. D. his heirs or aſſignees whatſoever, heritably and irredeemably; acts, inſtruments, and documents upon the premiſſes to aſk and take, and generally all and ſundry other things legal and neceſſary thereanent to do, that I might do myſelf, if perſonally preſent, or which to the office of procuratory in ſuch caſes is known to pertain. All which I promiſe to ratify and approve. *And* I bind and oblige me, my heirs, and ſucceſſors, to warrant, acquit, and defend the lands and others above diſponed, with the preſent right and diſpoſition of the ſame, and infeftment to follow hereupon, to be good and effectual, ſafe, and ſure to the ſaid C. D.

Clauſe of warrandice.

D. and his foreſaids, from all burdens, incumbrances, and grounds of eviction whatever, at all hands, and againſt all deadly (*a*), *excepting* always from the above warrandice all rights of property of the lands above diſponed, with the pertinents, or any part thereof, granted by me, my predeceſſors, or authors, to any perſon at any time preceding the date hereof; *reſerving* nevertheleſs to the ſaid C. D. and his foreſaids, to reduce, quarrel, or impugn the ſaid rights of property upon any ground or nullity competent in law, providing warrandice be not thereby incurred by me or my foreſaids (*b*); declaring hereby the ſaid C. D. his entry to the lands and others above diſponed, to have been and begun at the term of Martinmas laſt, notwithſtanding the date hereof: *And* I *bind* and *oblige* me and my foreſaids, to free and relieve the ſaid C. D. and his foreſaids, of all feu and blench duties, or other duties, ſervices, and caſualties, payable to my ſuperiors furth of the ſaid lands, and others above diſponed, at and preceding the term of ——— they being always obliged to relieve me and my foreſaids of the ſame in

Exception.

Relief of public burdens.

Aſſignation to the writs, and feu-duties and caſualties.

in all time coming thereafter. *Moreover*, I hereby *aſſign* and *make over* to and in favours of the ſaid C. D. and his foreſaids above written, the whole writs, evidents, rights, and ſecurities, conceived in favour of me, my predeceſſors, or authors, of and concerning the ſaid lands and others above diſponed; *and*, *in like manner*, the whole feu-duties, and other caſualties and emoluments of ſuperiority, due and payable furth of the ſaid lands and others foreſaid, from and after the ſaid term of Martinmas laſt, in all time coming; *which* aſſignation I bind and oblige me to warrant as follows, viz. in ſo far as concerns the writs and evidents at all hands, and againſt all deadly, and, in ſo far as relates to the duties and caſualties of ſuperiority, from my own proper fact and deed only: *And*, in regard the ſaid writs contain ſubjects of much greater value than thoſe hereby diſponed, I oblige me, and my foreſaids, to make authentic tranſumpts of as many of the ſame as amount to a clear progreſs for the ſaid C. D. and his foreſaids, and to make the original writs themſelves forthcoming to him or them upon all neceſſary occaſions, upon

their

their receipt and obligement for redelivery when theſe occaſions are over. (Clauſe of regiſtration; but no precept of ſeiſin; ſubſcription clauſe.)

Mr Spottiſwood, indeed, in a diſpoſition of ſuperiority, inſerts a precept of ſeiſine; but there is no room for it, nor is it ever in practice uſed; for though, in a diſpoſition *a me et de me*, to hold either of the granter or of the crown, the diſponee, by infefting on the precept therein contained will be conſtructed to hold *baſe* of the granter till he obtain confirmation, after which he will be conſidered as having held public from the date of his infeftment, and become the immediate vaſſal of the crown, and as having no more connection with or dependence upon the original diſponer: Yet here, the property being previouſly feued out, and the lands or ſuperiority to be held by a ſingle infeftment *a me*, there is no place either for this conſtruction, or for confirmation; beſides, this inſertion of a precept, or an obligation to infeft *de me*, if followed by infeftment, would render the diſpoſition of ſuperiority null, as the ſuperior cannot by law interpoſe

poſe another ſuperior betwixt him and his vaſſal, which the diſponee would in this caſe be, till the diſponer by reſignation were diveſted of his right.

—— *by the Vaſſal to his Superior.*

Where the vaſſal diſpones the property to his ſuperior, with a view to conſolidate it with the ſuperiority, it will be in this form:

Premiſſes. *Know all men* by theſe preſents, *me* C. D. proprietor of the lands after mentioned,

Granter. *for* a certain ſum of money advanced and

Conſideration. paid to me by A. B. Eſq; of C. ſuperior of the ſaid lands, whereof I grant receipt,

Receiver. renouncing all objections in the contrary;

Diſpoſitive. *therefore*, to *have ſold*, *alienated*, and *diſponed*, as I the ſaid C. D. by theſe preſents *ſell*, *alienate*, and *diſpone*, to and in favour of the ſaid A. B. his heirs and aſſignees whatſoever, heritably and irredeemably, *all* and *whole* (here inſert the lands), together with all right, title, intereſt, I have, or can pretend to the property of the ſaid lands:

And

And to the effect I may be fully diveſted of my right of property of the ſaid lands, in favour of the ſaid A. B. I hereby *make* and *conſtitute*

Procuratory of reſignation *ad remanentiam.*

and each of them, conjunctly and ſeverally, my lawful procurators, for me, and in my name, at any time and place lawful and convenient, to compear before the ſaid A. B. or his commiſſioners having power to receive reſignation, and *to reſign*, as I hereby *reſign*, *renounce*, *ſurrender*, *upgive*, *overgive*, and *deliver*, from me, my heirs and ſucceſſors, *to* and *in favour* of the ſaid A. B. his heirs and aſſignees, *all* and *whole* the ſaid (repeat the lands) lying as aforeſaid; with all right, title, or intereſt I have, or can pretend thereto; *in the hands*, and in favours of the ſaid A. B. and his foreſaids, *ad perpetuam remanentiam*, to the effect my right of property of the ſaid lands being conſolidated in the perſon of the ſaid A. B. and his foreſaids, with their own right of ſuperiority of the ſame, the ſaid lands and pertinents may remain and abide with them, abſolutely and irredeemably, in all time coming. Acts, inſtruments, &c. (*warrandice* of the diſpo-

Warrandice;

Aſſignation to the writs and rents; Delivery of the writs; Regiſtration; Subſcription.

diſpoſition and lands thereby diſponed at all hands; *aſſignation to the writs and rents*; of the firſt abſolutely, and of the other from fact and deed; *delivery of the writs*; *regiſtration*; *ſubſcription clauſe*; *but no precept of ſeiſine*, as the ſuperior's former ſeiſine revives upon this reſignation and inſtrument taken thereon, and regiſtered.

This inſtrument muſt be regiſtered within ſixty days after its date, 1669, c. 3.

But, if the diſpoſition is granted, not with a view of conſolidating the right of property and ſuperiority, it will be in the ſame form as a diſpoſition to any other perſon.

—— *by the ſuperior to his vaſſal.*

When the ſuperior diſpones the ſuperiority to his vaſſal, the vaſſal may reſign the right of property to him, and get a diſpoſition to both in common form; or he may get a diſpoſition, as any other perſon might do, to the ſuperiority: And a perſon thus

thus veſted by diſtinct rights in the property and ſuperiority of lands, may, at any time, grant a procuratory in his own favour for reſigning the property *ad remanentiam*, to conſolidate it with the ſuperiority. For this *procuratory*, ſee *Charters by Progreſs*.

Any alteration in a diſpoſition by the ſuperior to his vaſſal from the above diſpoſition of ſuperiority, would be trifling, ſuch as deſigning the granter 'ſuperior of 'the lands,' &c. and the diſponee 'heri-'table proprietor.' And after the deſcription of the lands, there might be added, 'in the fee of which lands the ſaid C. D. 'ſtands infeft held of me as ſuperior, to-'gether with all right, title, intereſt, whe-'ther of property or ſuperiority, which I, 'my authors,' &c. *Obligement to infeft* 'to be holden,' &c. as in the preceding diſpoſition of ſuperiority. *Procuratory of reſignation; warrandice*, in ſo far as concerns the ſuperiority, and leave out the *exception* in regard to rights of property betwixt (*a*) and (*b*). It might contain a *diſcharge* of all bygone *feu-duties*, and *caſualties of ſuperiority* payable furth of the

lands, and *aſſignation* thereto for the time to come; and *to the writs*; with *warrandice* of both; *clauſe of delivery of the writs*; *regiſtration and ſubſcription clauſe.* But there is no room for a precept of ſeiſine, as the vaſſal has the property before holding baſe, and it could not carry the ſuperiority. Even here it would appear neceſſary for the vaſſal, after obtaining his diſpoſition, and a charter and infeftment thereon, if he wiſhed to have the two rights firmly conſolidated, to grant a procuratory in his own favours *ad remanentiam*, and make reſignation; as this diſpoſition will not of itſelf have the effect to unite the two rights.

Diſpoſition holding burgage.

Diſpoſition of ſubjects holding Burgage.

Premiſſes. Granter. Conſideration. Receiver.

Be it known to all men by theſe preſents, that I, A. B. joiner in W. heritable proprietor of the ſubjects after diſponed, *for* the ſum of ——— inſtantly advanced and paid to me by G. H. merchant in W. as the agreed price and value thereof, where-

of

of I grant receipt, renouncing all objections to the contrary; *therefore*, have *ſold*, *alienated*, and *diſponed*, as I hereby *ſell*, *alienate*, and *diſpone*, to and in favour of the ſaid G. H. his heirs and aſſignees whatſoever, heritably and irredeemably, *all* and *whole* that tenement, &c. (here deſcribe it), together with all right, title, intereſt, claim of right, property, or poſſeſſion, petitory or poſſeſſory, which I have, or can pretend thereto, or to any part or portion of the ſame. In which tenement of houſes and yards, with the pertinents above diſponed, I bind and oblige me, my heirs and ſucceſſors, to infeft and ſeiſe the ſaid G. H. and his foreſaids, upon their own proper charges and expences, *to be holden* of our Sovereign Lord the King's Majeſty in free burgage, *for* ſervice and duties of borough uſed and wont; and that by reſignation thereof in the hands of the provoſt, or any one of the bailies of W. for the time, as in the hands of our Sovereign Lord the King, and his royal ſucceſſors, immediate lawful ſuperiors thereof: *And* for that effect I hereby *make*, *conſtitute*, and *ordain*

Diſpoſitive.

Obligement to infeft.

Tenendas.

Reddendo.

Procuratory of reſignation.

and

and each of them jointly and ſeverally, my procurators for me and in my name at any time lawful and convenient, to compear before the provoſt, or any one of the bailies of W. for the time, upon the ground of the ſaid tenement, and, there with all due reverence and humility, as becomes purely and ſimply by ſtaff and baton, as uſe is, *to reſign*, as I hereby *reſign and ſurrender*, the ſaid tenement of houſes, high and laigh, back and fore, with the yard or garden of the ſame, lying, bounded, and deſcribed in manner before-mentioned, together with all right, title or intereſt I have, or can pretend thereto; *in the hands of* the ſaid provoſt, or any one of the bailies of the ſaid borough of W. for the time, as in the hands of his Majeſty, immediate lawful ſuperior thereof; *in favour*, and for new infeftment of the ſame to be made, given, and granted to the ſaid G. H. and his foreſaids, heritably and irredeemably, in due and competent form; acts, inſtruments, and documents upon the premiſes to aſk, take, and raiſe, and generally every other thing thereanent to do that I could have done, before granting hereof,

or

or which, to the office of procuratory in ſuch caſes is known to pertain: *Promiſing* to hold firm and ſtable whatever my ſaid procurator ſhall lawfully do or cauſe to be done, in the premiſes, without revocation. *Which* diſpoſition and ſubjects before diſponed, procuratory of reſignation before written, and infeftment to follow hereon, I *bind* and *oblige* me, my heirs and ſucceſſors, to warrant to the ſaid G. H. and his foreſaids, at all hands and againſt all deadly, as law will. *Further*, I bind and oblige me and my foreſaids, to free, relieve, and diſburden the ſaid ſubjects of all ceſs, ſtents, taxations, and other public burdens due and payable furth thereof, at and preceding the term of Martinmas laſt, one thouſand ſeven hundred and eighty—— years, which is hereby declared to have been the ſaid G. H.'s entry thereto, notwithſtanding the date hereof. *And moreover*, I hereby make and conſtitute the ſaid G. H. and his foreſaids my lawful ceſſionars and aſſignees, *not only in* and *to* the rents, mails, and duties of the ſubjects before diſponed, from and after the ſaid term of Martinmas laſt, and in all time coming; *but*

Warrandice.

Relief of public burdens.

Aſſignation to the rents, and writs.

but alſo in and to the writings, both old and new, of and concerning the ſaid ſubjects; *Surrogating* and *ſubſtituting* the ſaid G. H. and his foreſaids in my full right and place of the premiſes, with power to them to call, charge, and purſue for payment of the ſaid rents, output and input tenants, and generally every other thing to do that I could have done before granting hereof, which aſſignation before written I bind and oblige me and my foreſaids to warrant as follows, viz. As to the writs and evidents at all hands and againſt all deadly, as law will; and as to the rents, mails, and duties, from my own proper facts and deeds allenarly: *And* I have herewith delivered up to the ſaid G. H. the whole writs and evidents of and concerning the ſaid tenement of houſes and yard, to be kept and uſed by him and his foreſaids, as their own proper evidents in time coming: *Conſenting* to the regiſtration, &c. in the books of Council and Seſſion, borough-court books of W. or others competent, &c. (*ſubſcription clauſe*, but no precept).

Delivery of the writs.

Regiſtration.

Subſcription.

Deed

Deed of Mortification.

Mortification.

Be, &c. *me* A. B. of C. *from* pure charity, and for maintenance of the poor and indigent, *to have given*, *granted*, and *diſponed*, as I hereby, with and under the conditions and proviſions after ſpecified, *give*, *grant*, *diſpone*, and *mortify*, to and in favours of the Rev. Mr —— miniſter of the goſpel at —— and —— —— —— and —— elders of the ſaid pariſh, and to their ſucceſſors in their reſpective offices, as truſtees for, and to the uſe and behoof of the poor and indigent perſons aftermentioned, *all* and *whole* (deſcribe the lands) together with all right, title, &c. *In which* lands and others foreſaid, with the pertinents, I *bind* and *oblige* me to infeft and ſeiſe the ſaid Mr —— miniſter, and —— —— —— and —— elders, and their ſucceſſors in their reſpective offices, by a ſingle infeftment, *to be holden* of me, my heirs and ſucceſſors, in free blench, *for* payment of a penny Scots money upon the ground

Premiſſes.

Granter.

Conſideration.

Diſpoſitive.

Receivers.

Uſe.

Obligement to infeft.

Tenendas.

ground of the ſaid lands, at the term of Whitſunday yearly, in name of blench farm, if aſked allenarly; *which* diſpoſition and mortification, and lands and others thereby diſponed and mortified, I bind and oblige me to warrant at all hands. (*Aſſignation to the rents and writs; clauſe of delivery* of the writs; *regiſtration*; *precept of ſeiſine*, in which take in the conditions and proviſions and deſcription of the perſons to be entitled to the benefit of the mortification.)

Warrandice.

In lands mortified in times of popery to the church, whether granted to prelates for the behoof of the church, or *in puram eleemoſynam*, the only ſervices preſtable by the vaſſal were prayers and ſinging of maſſes for the ſouls of the deceaſed, which approaches nearer to blench-holding than any other holding. The purpoſes of ſuch grants having been, upon the reformation, declared ſuperſtitious, the lands mortified were annexed to the crown: But mortifications to univerſities, hoſpitals, &c. were not affected by that annexation, and lands may, at this day, be mortified to any lawful

ful purpoſe, either by blench or feu holding *.

This, it is hoped, will be ſufficient to juſtify me in inſerting the above *tenendas* and *reddendo*; although Mr *Dallas*, Mr *Spottiſwood*, and other old writers of Stiles, not adverting to this alteration occaſioned by the reformation, have inſert the old *tenendas* and *reddendo*, '*in puram eleemoſinam, et in manum mortuam, pro precibus et ſuffragiis* of the poor and indigent 'perſons after mentioned.' This deed is ſeldom uſed in practice; ſometimes an annuity of ſome bolls of victual, or an annualrent in money, is mortified: But this will be more connected with *heritable bonds of annuity*. Any perſon curious to ſee a very full one of a large ſubject, for the purpoſe of building an hoſpital, may conſult *Dallas's Stiles*.

Diſpoſitions of Teinds by a Titular. *Of Teinds.*

Be, &c. *me*, A. B. Eſq; of C. titular of the teinds after diſponed; *foraſmuchas* D. Premiſes. Granter.

I E.

* See Erſkine's Inſtitutes.

Conſideration. E. Eſq; of F. hath made payment to me of —— as the agreed worth and value of my right to the teinds, parſonage and vicarage, after diſponed, whereof I grant the receipt, renouncing, &c. *Therefore* to have

Diſpoſitive. *ſold*, *alienated*, and *diſponed*, as I hereby, &c. *to* and in favours of the ſaid D. E. his heirs and aſſignees whatſoever, heritably and irredeemably, *all* and *whole* the teinds, parſonage and vicarage, of theſe parts and portions of the lands and barony of C. after mentioned, viz. (here take in the lands) together with all right, title, intereſt, which I, my predeceſſors or authors, heirs or ſucceſſors, had, have, or any ways may have, claim, or pretend to the teinds, parſonage and vicarage, above diſponed, fruits, rents, and emoluments of the ſame, or any part thereof, in time coming: *In the which*

Obligement to infeft. teinds, parſonage and vicarage, above diſponed, I bind and oblige me, my heirs and ſucceſſors, duly and validly to infeft and ſeiſe the ſaid D. E. and his foreſaids, by two ſeveral infeftments and manners of holding, one thereof to be holden of me and my foreſaids in free blench, for payment of a penny Scots yearly upon the ground

ground of the ſaid lands, at the term of Whitſunday, if aſked allenarly, and freeing and relieving us at the hands of the miniſter of —— and his ſucceſſors in office, in all time coming, of the modified and allocated ſtipend payable to them in manner after-mentioned; and the other of the ſaid infeftments to be holden from me of my immediate lawful ſuperiors of the ſaid teinds, as freely, in all reſpects, as I held, or may hold the ſame myſelf, (procuratory of reſignation) to reſign all and whole the ſaid teinds, parſonage and vicarage, of theſe parts and portions of the lordſhip and barony of C. before and after mentioned, viz. (repeat them), together with all right, title, intereſt, which I, my predeceſſors or authors, had, have or any ways may have, claim, or pretend to the ſaid teinds, parſonage and vicarage, above diſponed, fruits, rents, and emoluments thereof, or any parts or portions thereof, in all time coming. *In the hands*, &c. *in favours*, &c. *Which* teinds, parſonage and vicarage, above diſponed, with this preſent right and diſpoſition thereof, and infeftments to follow hereon, I bind and oblige

Procuratory of reſignation.

Warrandice.

blige me and my foreſaids, to warrant to the ſaid D. E. and his foreſaids, from my own facts and deeds, done or to be done, in prejudice hereof, and no further; that is to ſay, that I have not granted, nor ſhall I make or grant, any other right or diſpoſition of the premiſſes prejudicial hereunto in any ſort. *Moreover, I* hereby *make, conſtitute,* and *ordain* the ſaid D. E. and his foreſaids, my lawful ceſſioners and aſſignees, *in* and *to* the writs and evidents of the ſaid teinds, parſonage and vicarage; *and alſo* in and to the rents, maills, duties, caſualties, profits, and emoluments thereof, for the preſent crop and year one thouſand ſeven hundred and eighty and in all time coming, and of all crops and years bygone reſting unpaid; with full power to him and his foreſaids to uplift and receive the ſaid rents, duties, and caſualties; and, if need be, to call and purſue for the ſame as accords, decreets thereupon to recover, diſcharges thereof to grant, and generally all other things thereanent to do, that I could have done myſelf, before granting of this preſent right and aſſignation; which I bind and oblige me and

Aſſignation to the writs and rents.

and my foreſaids to warrant to the ſaid D. E. and his foreſaids, from my own proper facts and deeds, done or to be done, in prejudice hereof. *But it is always* hereby *provided* and *declared*, that the ſaid D. E. and his foreſaids, ſhall be obliged to free and relieve me and my foreſaids, at the hands of the miniſter of the pariſh of —— and his ſucceſſors in office, of the yearly modified and allocated ſtipend, payable furth of the teinds above diſponed, or augmentations thereof; (*clauſe of delivery of the writs*, or *obligation* to *make them forthcoming; regiſtration.*) *Attour*, to the effect the ſaid D. E. may be more readily infeft and ſeiſed in the ſaid teinds above diſponed, to be holden in manner foreſaid, I *deſire* and *require* you

Proviſion.

Delivery of the writs.

Regiſtration.

Precept of ſeiſine.

and each of you, my bailies in that part ſpecially conſtituted, that, on ſight hereof, ye paſs to the ground of the ſaid lands, and there give and deliver heritable ſtate and ſeiſine, actual real and corporal poſſeſſion, of *all* and *whole* the teinds, parſonage and vicarage, of theſe parts and portions of the lands and barony of C. viz. of *all* and *whole* (repeat the lands) to the

ſaid

ſaid D. E. and his foreſaids, and that by delivery to him, or his certain attorney in his name, bearer hereof, of a handful of graſs and corn, as uſe is, upon the ground of the ſaid lands; and this in nowiſe ye leave undone: The which to do, I commit to you, and each of you, conjunctly and ſeverally, my full power, by this my precept of ſeiſine, directed to you for that effect. *In witneſs whereof*, &c.

Subſcription clauſe.

Inſtruments of Seiſine upon the foregoing Diſpoſition, and a few others connected therewith.

It has been already obſerved, that lands are conveyed by charter and ſeiſine; that by *a charter* is underſtood the grant or deed of conveyance of the ſubject, whether under the form of what is particularly called a charter, or even of a diſpoſition or contract. *A ſeiſine* is a notorial inſtrument, or atteſtation of a notary and witneſſes,

neſſes, that ſymbolical poſſeſſion was delivered by the ſuperior or his bailie, to the vaſſal or his attorney, by delivery of earth and ſtone, or other ſymbols accuſtomed, upon the ground of the fee. This laſt is ſo neceſſary, that the property of lands is never underſtood, in the conſtruction of law, to be thoroughly inveſted in the perſon of the acquirer, but, on the contrary, deemed to remain with his author until he has perfected his right by ſeiſine; it is even a common maxim in law, *nulla ſaſina, nulla terra.*

In ſeveral parcels of land which lie contiguous, one ſeiſine ſerves for all, unleſs the right of the ſeveral parcels be either holden of different ſuperiors, derived from different authors, or enjoyed by different tenures. In diſcontiguous lands, a ſeparate ſeiſine muſt be taken on every parcel, unleſs the Sovereign has united them in one tenandry by a charter of union, or the lands be erected into a barony; in which caſe, if there is no ſpecial place mentioned, one ſeiſine taken on any part of the united lands will ſerve for the whole.

For

For the ſecurity of purchaſers, by act 1617, cap. 16. ſeiſines muſt be regiſtered within ſixty days after their date, either in the general regiſter of ſeiſines at Edinburgh, or in the regiſter of the particular ſhire appointed by the act; which is not in every caſe the ſhire within which the lands lie; the firſt commonly called the *general regiſter*, and the other the *particular regiſter* of ſeiſines. *Seiſines* in royal boroughs, not being included in the act, were by 1681, c. 11. ordained to be regiſtered within ſixty days in the books of the borough.

Inſtrument of Seiſine upon a Diſpoſition to Lands.

Invocation.

In the name of God, amen, be it known to all men, by this preſent public inſtrument,

Day of the month, year of God.

That upon the day of one thouſand ſeven hundred and eighty years, and of the reign of our Sove-

Name of the King,

reign Lord George the Third, by the grace of

of God, King of Great Britain, France, and Ireland, Defender of the Faith, the twenty year; *in preſence* of me notary-public, and witneſſes after deſigned, ſubſcribing, *compeared* perſonally upon the ground of the lands and others after-mentioned as procurator and attorney for, and in name of C. D. in E. whoſe power of procuratory was clearly known and underſtood by me notary-public, ſubſcribing; *where compeared* alſo perſonally, bailie in that part, ſpecially conſtituted by the precept of ſeiſine after inſert, the ſaid attorney foreſaid, *having* and *holding* in his hands a diſpoſition, dated, ——— made, and granted, by A. B. of C. to and in favour of the ſaid C. D. whereby the ſaid A. B. (for the cauſes therein ſpecified) *ſold*, *alienated*, and *diſponed*, from him, his heirs and ſucceſſors, to and in favours of the ſaid C. D. his heirs and aſſignees whatſoever, heritably and irredeemably, *all* and *whole* (take in the lands), together with all right, title, intereſt, claim of right, property and poſſeſſion, petitory

and year of his reign.

Compearance of the vaſſals attorney, and Superior's bailie.

Narrative.

or poſſeſſory, which he, his predeceſſors or authors, heirs or ſucceſſors, had, have, or any ways may have, claim, or pretend thereto in time coming; as the ſaid diſpoſition, of the date foreſaid, containing obligement to infeft by two ſeveral infeftments and manners of holding, *a me et de me*, procuratory of reſignation, clauſe of abſolute warrandice, aſſignation to the maills and duties, writs, and evidents, the precept of ſeiſine after inſert, and ſeveral other clauſes more fully bears: *Which* diſpoſition, containing the ſaid precept of ſeiſine, the ſaid as procurator foreſaid, *exhibited* and *preſented* to the ſaid bailie in that part foreſaid, by the ſaid precept of ſeiſine, deſiring and requiring him, in virtue thereof, to proceed to the due execution of the office of bailiary thereby committed to him; *which* deſire the ſaid bailie finding to be reaſonable, he accepted and received the ſaid diſpoſition into his hands, and delivered the ſame to me notary-public, to be read and publiſhed in preſence of the witneſſes ſubſcribing, then by-ſtanding. *Which* I accordingly did;

Delivery of the warrant by the attorney to the bailie; and requiſition to him to execute his office.

Acceptance and receipt of the warrant by him.

Delivery thereof to the notary.

Publication thereof by him.

did; and of which precept of ſeiſine the tenor follows: *Attour*, &c. (here inſert the precept word for word, the ſubſcription clauſe of the diſpoſition, and ſubſcriptions of the granter and witneſſes, introduced thus, "(ſigned) A. B. witneſs, —— witneſs.") *After* reading and publiſhing of which diſpoſition, and precept of ſeiſine therein contained, the ſaid bailie foreſaid, by virtue thereof, and of his office of bailiary thereby committed to him, gave and delivered to the ſaid C. D. heritable ſtate and ſeiſine, actual, real, and corporal poſſeſſion, of *all* and *whole* the lands and others foreſaid, lying, bounded, and deſcribed in manner above mentioned, and that by delivery to the ſaid as procurator and attorney foreſaid, in his name, of earth and ſtone of the ground of the ſaid lands, to be holden in manner therein mentioned, after the form and tenor of the ſaid diſpoſition and precept of ſeiſine, in all points, none oppoſing or contradicting the ſame:— *Whereupon*, and upon all and ſundry the premiſſes, the ſaid as procurator foreſaid, aſked and

Inſertion of the precept.

Attorney's taking of inſtruments.

and took inſtruments in the hands of me notary-public, ſubſcribing; *theſe things* were ſo done upon the ground of the foreſaid lands, betwixt the hours of and of the day of the month, year of God, and of his Majeſty's reign, reſpectively above written, *before* and *in preſence* of and witneſſes to the premiſſes, ſpecially called and required.

Place.

Hour of the day.

Witneſſes.

Then follows the notary's docquet, which, as it is written with his own hand, and as he is obliged to annex it to the extract of his act of admiſſion, it is unneceſſary here to inſert. If the inſtrument is written bookwiſe, and conſiſts of more than one page, it is neceſſary to mark the number of the pages at the head of them; and in the docquet, at the words *manu mea*, (*vel aliena*) to add, *ſuper hanc et —— praecedentes pergaminae debitae impreſſae paginas*; as by act of ſederunt, 17th January 1756, it is appointed that the pages be marked *firſt*, *ſecond*, *third*, &c. and the number of pages mentioned in the docquet.

If

If the diſponee is preſent, in place of the compearance of the vaſſal's attorney, it will be, '*compeared* C. D. in E. to whom and 'in whoſe favours the diſpoſition after 'mentioned is made and granted; *where* '*compeared*, &c. the ſaid C. D. *having*, &c. '*which* diſpoſition, &c. the ſaid C. D. 'exhibited,' &c. (and in the delivery of ſeiſine) 'and that by delivery to the ſaid 'C. D. perſonally preſent, of earth and 'ſtone, &c. *whereupon*, &c. the ſaid C. D. 'aſked and took inſtruments,' &c.

—if the diſponee is preſent.

For ſeiſine, *propriis manibus*, ſee TIT. 7th.

The variations 1, 2, 3, 4, in the diſpoſition, will occaſion little variation in the ſtrument of ſeiſine, which may be eaſily made from the directions with regard to diſpoſitions. The delivery of ſeiſine is in terms of the precept.

—if variations 1, 2, 3, 4.

If with conſent of the diſponer's wife, the narrative will be, '*having*, &c. a diſ-'poſition, of date ——— and containing 'the precept of ſeiſine after inſert, made 'and granted by A. B. of C. proprietor of 'the lands and others therein after diſ-'poned, with the ſpecial advice and con-'ſent

—if with conſent of the diſponer's wife.

'ſent of M. H. his ſpouſe, and by her the 'ſaid M. H. for all right of liferent, an- 'nuity, or other proviſion, to which ſhe 'or her heirs have right, or may be enti- 'tled out of the ſaid lands, with conſent of 'her ſaid huſband, and them both with one 'conſent, and the ſaid A. B. as taking bur- 'den on him for his ſaid ſpouſe,' &c.

—if by the wife, with conſent of her huſband.

If by a wife of her lands, '*having*, &c. 'a diſpoſition, of date ——— granted by '——— ſpouſe to A. B. of C. with the 'ſpecial advice and conſent of the ſaid A. 'B. her huſband, and them both, with one 'conſent and aſſent, duly ratified by the 'ſaid —— upon the —— day of ——— 'whereby (for the cauſes therein ſpecified) 'the ſaid ——— with advice and conſent 'foreſaid, *ſold*, *alienated*,' &c.

—on diſpoſition by a truſtee, and in conſequence of articles of roup.

If on a diſpoſition by a truſtee for be- hoof of creditors, in conſequence of articles of roup, '*having*, &c. a diſpoſition, dated, '&c. made and granted by A. B. writer in '——as having right to the ſubjects therein 'after diſponed, in truſt for G. H. of I. 'and his creditors, conform to truſt-diſpo- 'ſition in his favours, dated —— and in- 'ſtrument of ſeiſine following thereon, 'dated

'dated —— and recorded in the ——— '—— the —— day of ——— whereby '(for the cauſes therein ſpecified), the ſaid 'A. B. as truſtee foreſaid, and in imple- 'ment of the articles of roup therein men- 'tioned, *ſold*, *alienated*, and *diſponed*, &c.

—if a variation in the narrative.

A variation in the narrative, unleſs in the deſignation of the granter, is ſeldom taken notice of in the inſtrument of ſeiſine: This variation 8. in the foregoing diſpoſitions, will be only '*having*, &c. a 'diſpoſition, dated, &c. made and granted 'by A. B. eldeſt lawful ſon and heir of the 'deceaſed J. B. of —— whereby (for the 'cauſes therein ſpecified), he *ſold*, *alienated*, 'and *diſponed*,' &c.

—on a general diſpoſition, containing diſpoſition of a particular ſubject.

If on a *general diſpoſition*, containing a diſpoſition of a particular ſubject, either narrate the diſpoſitive part of the general diſpoſition, and then the *diſpoſition* of the particular ſubject in common form; or, as the inſtrument of ſeiſine has no connection with the matters contained in the *general diſpoſition*, ſay, '*having*, &c. a general diſ- 'poſition, dated, &c. made and granted by ——— whereby (for the cauſes there- in ſpecified), he, *inter alia*, *gave*, *granted*,' &c.

&c. and narrate the diſpoſition of the particular ſubject.

—on diſpoſition in liferent.

If on a diſpoſition in liferent, narrate the diſpoſitive clauſe in the diſpoſition, and in *the delivery of ſeiſine*, ſay, 'gave 'and delivered liferent ſtate and ſeiſine,' in place of 'heritable ſtate and ſeiſine.'

—of lands principal, and others in warrandice.

If on a diſpoſition to lands principal, and others in warrandice, *having*, &c. made and granted by A. B. of C. whereby (for the cauſes therein ſpecified) the ſaid A. B. *ſold*, &c. *all* and *whole* (inſert the lands principally diſponed) and theſe for the principal; *and alſo* all and whole (here inſert the warrandice lands), in ſpecial and real warrandice, and ſecurity of the lands, and others above ſpecified, principally diſponed; ſo that, if it ſhall happen the ſame, &c. (as in the diſpoſition), as the ſaid diſpoſition, containing, &c. and, in the *delivery of ſeiſine*, 'gave and delivered to the 'ſaid C. D. heritable ſtate and ſeiſine, ac-'tual, real, and corporal poſſeſſion, of *all* 'and *whole* the ſaid (inſert the principal 'lands), and theſe for the principal; *and* '*alſo*, of *all* and *whole* (inſert the warran-'dice lands), in ſpecial and real warran-

'dice

'dice, and ſecurity of the lands and others 'above ſpecified, principally diſponed, in 'the event before mentioned, reſpectively 'and ſucceſſively after others, by deli-'very,' &c.

When the granter has not got proper titles eſtabliſhed, as heir to his predeceſſor, it is unneceſſary to take any notice hereof in the inſtrument of ſeiſine, as the diſponer muſt be infeft upon the retour of his ſervice before the diſponer can infeft upon the diſpoſition. Seiſine upon the precept of retour can only be given by the ſheriff or ſtewart-depute, and no other perſon can act as notary, except the ſheriff or ſtewart-clerk. The inſtrument is written in Latin, being the ſame language with the precept, and is in theſe terms:

—if the granter has not got proper titles.

Inſtrument of Seiſine upon a Precept from the Chancery.

—*upon a precept from the Chancery.*

In Dei nomine, amen: Per hoc praeſens publicum inſtrumentum cunctis pateat et

Invocation.

ſit notum, quod anno ab incarnatione Domini noſtri Ieſu Chriſti milleſimo ſeptingenteſimo octogeſimo —— regnique ſupremi Domini noſtri Georgii Tertii, Dei gratia, Magnae Britanniae, Franciae, et Hiberniae, Regis, Fidei Defenſoris, vigeſimo —— menſis vero *In mei* notarii publici, et clerici vicecomitatus de teſtiumque ſubſcriben. praeſentia apud virtute diſpenſationis in praecepto ſaſinae ſubinſert. mentionat. *comparuit* tanquam actornatus pro et in nomine C. B. de E. cujus actornati poteſtas mihi notario publico lucide conſtabat: *Et ibidem, etiam comparuit* vicecomes vicecomitat. de dict. actornatus antedict. *Habens*, et in ſuis manibus *tenens*, quondam praeceptum ſaſinae e cancellaria (*a*) dict. S. D. N. Regis directum in favorem dict. C. B. pro illo infeodando tanquam propinquiori et legitimo haeredi (*b*), deſervit. et retornat. quond. J. B. de E. ſuo patri in terris aliiſque ſubſcript. ut dictum praeceptum ſaſinae de data ſubinſert. in ſe latius proportat. *Quodque* praeceptum ſaſinae praefatus tanquam actor-

Year of God. King's reign.

Day of the month.

Compearance of the vaſſal's attorney, & of the ſheriff.

Narrative.

Delivery of the warrant to the ſheriff.

actornatus antedict. *exhibuit* et *praeſentavit*
dicto vicecomiti
antedict. illum rogans et requirens ad executionem officii vicecomitis ſibi per idem commiſſi debite procedere; quod deſiderium dict. vicecomes

Acceptance by him.

juſtum fore percipiens dictum praeceptum ſaſinae in manibus ſuis accepit, mihique notario publico ſubſcriben. per me, teſtibus et aſtantibus, perlegendum, ac in ſermone vulgari explicandum et publicandum, tradidit: Quod feci; et cujus praecepti ſaſinae tenor ſequitur in hiſce verbis: (*Hic inſere praeceptum verbatim*). *Poſt* cujus praecepti ſaſinae antea recitat. perlectionem, explicationem, et publicationem, praefatus vicecomes

Delivery to the notary.

Publication by him.

Inſertion of the precept.

antedict. virtute dict. praecepti et officii ſui praedict. et diſpenſationis inibi mentionat. *dedit* et *tradidit* praefato C. B. nunc de E. tanquam legitimo et propinquiori haeredi (*c*) dict. quond. J. B. patri ejus, ſtatum et ſaſinam haereditariam, pariterque poſſeſſionem actualem, realem, et corporalem, *totarum* et *integrarum* praedict. terrarum, aliorumque particulariter antea ſpecificat. jacen. et deſcript. ut praefertur (*d*), *quamque*

Delivery of ſeiſine.

ſaſinam

ſaſinam dict. vicecomes dedit, per terrae et lapidis fundi dict. terrarum de praefato tanquam actornato, pro et in nomine dict. C. B. traditionem et deliberationem, ut moris eſt, ſecundum formam et tenorem dict. praecepti ſaſinae antea inſert. et diſpenſationis praedict. in omnibus, nemine contradicente, ſeu in contrarium opponente; ſalvo jure, quo ſupra, *ſuper* quibus omnibus et ſingulis praemiſſis praefat.

Taking of inſtruments.

tanquam actornatus antedict. inſtrumentum unum vel plura, a me notario publico ſubſcriben. ſibi fieri petiit. *Acta* erant haec debite et legitime in omnibus apud dict.

Place.

modo mentionat. in hoc

Hour.

publico inſtrumento: Horas inter et meridiem, diei menſis anno Domini milleſimo ſeptingenteſimo octogeſimo et anno

Witneſſes.

Regis regni ſupraſcript. *praeſentibus* ibidem et teſtibus ad praemiſſa ſpecialiter vocatis et requiſitis.

The blank after *vicecomes*, is intended for *deputatus*, or *ſubſtitutus*, as it may happen

pen to be done by the ſheriff-depute or ſubſtitute; and, in caſe it is the clerk's depute, it will be *clerici deputati vicecomitatus.*

If the lands lie in a ſtewartry, in place of *vicecomes* and *vicecomitatus*, ſay, *ſeneſcallus* and *ſeneſcallatus.*

If the lands lie in a ſtewartry.

If held by a prince.

If the lands are held of the Prince, ſay at letter (*a*), 'e cancellaria Magnae Britanniae et Walliae Principis, et ſeneſcallus Scotiae.'

If to an heir male, and of tailzie and proviſion.

If to an heir male and of tailzie, ſay at letter (*b*), 'maſculo et talliae et proviſionis,' and at letter (*c*), 'maſculo et talliae et proviſionis,' and at (*d*), 'ſed cum et ſub proviſionibus, conditionibus, limitationibus, clauſulis irritantibus et reſolutivis, et facultatibus, reſpective, praeſcript.'

Seiſine upon a precept from the chancery, or a crown-charter, does not require ſtamped vellum; and therefore the words *debitae impreſſae* may be left out in the docquet.

The inſtrument of ſeiſine in favour of the diſponee may then proceed in common form; and the narrative may be in theſe terms:

—upon the diſpoſition.

terms: *Having*, &c. a diſpoſition made and granted by C. B. of E. of date the —— whereby (for the cauſes therein ſpecified) the ſaid C. B. *ſold*, *alienated*, and *diſponed*, &c. *all* and *whole*, &c. together with all right, title, and intereſt, that he, his predeceſſors or authors, heirs and ſucceſſors, had, have, or any ways might have, claim, or pretend thereto, in time coming; as the ſaid diſpoſition, of the date foreſaid, containing obligement to infeft by two ſeveral infeftments, and manner of holding *a me et de me*, procuratory of reſignation, clauſe of warrandice, aſſignation to the maills and duties, writs and evidents, the precept of ſeiſine after inſert, and ſeveral other clauſes in itſelf, more fully bears; (and ſo on to the end.)

—upon a diſpoſition and retour of a general ſervice.

It has been already obſerved, that if the perſon, in whoſe favours a charter or diſpoſition is granted, does not take ſeiſine in his lifetime, his heir may obtain himſelf ſerved heir in general, which gives him right to every ſubject, which either does not require infeftment, or on which infeftment has not followed, and may be thereupon infeft; as by act of parliament 1693, cap.

cap. 35. procuratories of reſignation, and precepts of ſeiſine continue in force after the death of the granter or grantee, except *precepts* of *clare conſtat*. In this caſe, it will be neceſſary, after the narrative of the diſpoſition, to add, ‘ *as alſo* the ſaid attor- ‘ney having, and in his hands holding, ‘ retour of the general ſervice of the ſaid ‘ —— as heir to the ſaid —— his father, ‘ led before —— dated and retoured to ‘ chancery ——— as the ſaid retour more ‘ fully bears: By which retour the ſaid ‘ ——— has now right to the ſaid lands, ‘ and others foreſaid, and to the foreſaid ‘ diſpoſition thereof, and precept of ſeiſine ‘ therein contained, which remains hither- ‘ to unexecute. *Which* diſpoſition and re- ‘ tour, &c. accepted and received the ſaid ‘ diſpoſition and retour of the general ‘ ſervice of the ſaid ——, &c. *after* reading ‘ and publiſhing of which diſpoſition and ‘ retour, &c. by virtue of the ſaid precept ‘ of ſeiſine, and of his office of bailiary ‘ thereby committed to him, and retour of ‘ the general ſervice foreſaid, by which the ‘ ſaid —— has right to the ſaid lands, ‘ and others foreſaid, gave, &c. to the ‘ ſaid

Additional narrative.

Delivery to the bailies, &c.

'ſaid ——— as heir foreſaid, and his having 'right in manner before mentioned, heri-'table ſtate, &c. after the form and tenor 'of the ſaid diſpoſition, and precept of ſei-'ſine, and retour of the general ſervice of 'the ſaid —— in all points,' &c.

—upon a Feu-right.

Inſtrument of Seiſine upon a Feu-right.

Invocation, &c. Narrative. In the name, &c. In preſence, &c. having, &c. a feu-right or diſpoſition, dated the —— day of ——— made and granted by A. B. Eſq; of C. (whereby for the cauſes therein ſpecified), he *ſold*, *alienated*, and *diſponed*, and in feu-farm and heritage *gave out* and *demitted*, to and in favours of the ſaid C. D. his heirs or aſſignees whatſoever, heritably and irredeemably, *all* and *whole* (deſcribe the lands), together with all right, title, and intereſt whatever, which he had, or could pretend to the property of the ſaid lands and others in time coming; as the ſaid feu-right, or diſpoſition containing obligement to in-

feft,

feſt, aſſignation to the writs and evidents, and rents of the ſaid lands; a clauſe of warrandice, with the precept of ſeiſine after inſert, and ſeveral other clauſes, in itſelf more fully bears.

— upon a feu-charter.

Inſtrument of ſeiſine upon a feu-charter, ſays, in place of the foregoing,

Having, &c. a feu-charter, &c. whereby (for the cauſes therein ſpecified), the ſaid A. B. *gave*, *granted*, *alienated*, and *diſponed*, and in feu-farm *let* and *demitted* to, &c. as the ſaid feu-charter, containing clauſe of warrandice, aſſignation to the writs and evidents, and rents, maills, and duties, with the precept of ſeiſine, &c.

—upon an after diſpoſition thereof.

Inſtrument of ſeiſine, upon an after diſpoſition of lands feued out, differs in nothing from the firſt example of an inſtrument of ſeiſine upon a diſpoſition.

Upon the diſpoſition of ſuperiority, reſignation is made in the hands of the Barons of Exchequer; an inſtrument extended thereon; a ſignature preſented; a precept thereupon iſſued under the ſignet, to the keeper of the privy ſeal, who iſſues another precept, directed to the keeper of the great ſeal; upon which a charter is

made out in chancery and recorded, and the great ſeal appended. But the expeding of theſe charters is the excluſive privilege of the ſociety of writers to the ſignet, and makes no part of my preſent plan. As ſeiſine may be given upon theſe charters by any perſon, as ſheriff in that part, and any notary may act as notary in this caſe; and more eſpecially as I ſhall have occaſion, in the following Title, to give examples of conveyances of ſuch charters and inſtruments of ſeiſine thereon, I have thought it neceſſary to give the following example of an inſtrument of ſeiſine upon a charter of reſignation.

—upon a *charter of reſignation.*

Inſtrument of Seiſine upon a charter of Reſignation.

Invocation. *In Dei nomine*, &c. *In mei notarii* publici teſtiumque ſubſcriben. praeſentia

Compearance. perſonaliter *comparuit*, apud
virtute diſpenſationis in carta poſtea mentionat. content.
tanquam actornatus, pro et in nomine

mine C. D. de —— cujus actornati poteſtas mihi notario publico lucide conſtabat: *Et ibidem etiam comparuit*

vicecomes in hac parte vicecomitatus de ——— ad effectum ſubtus mentionatum ſpecialiter conſtitut. per praeceptum ſaſinae ſubinſert. in dict. carta content. dictus actornatus *habens*, et in ſuis manibus *tenens*, quandam cartam reſignationis de data content. in praecepto ſaſinae ſubinſert. fact. dat. et conceſſ. per dict. ſupremum Dominum noſtrum Regem, cum ſpeciali aviſamento et conſenſu Domini capitalis baronis, aliorumque baronum ſcaccarii Scotiae, ſub ſigillo per unionis tractatum cuſtodiend. et in Scotiae vice et loco magni ſigilli ejuſd. utend. ordinat. (*a*) *In favorem* dict. C. D. per quam cartam praefatus, S. D. N. Rex, cum aviſamento et conſenſu praedict. *dedit*, *conceſſit*, et *diſpoſuit*, ac pro ſeipſo, ſuiſque Regiis ſucceſſoribus, pro perpetuo *confirmavit*, dicto C. D. et haeredibus ſuis et aſſignatis quibuſcunque, haereditarie et irredeemabiliter, *totas* et *integras* (inſere terras), prout dicta carta, quae continet diſpenſationem pro capiendo ſaſinam, omnium et ſingularum terrarum

Narrative.

terrarum inibi content. ſeu ullius partis aut portionis earund. apud ——— vel ſuper ſolo cujuſvis partis praedict. terrarum, per traditionem terrae et lapidis ſolummodo, non obſtan. eadem jacean diſcontigue, ac poſcerent plura infeofamenta, et diverſa ſymbola, praeceptum ſaſinae poſtea inſertum, et nonnullas alias clauſulas in ſe latius proportat; *quamque* cartam dictus tanquam actornatus praedict. *exhibuit* et *praeſentavit* praefato vicecomiti in hac parte antedict. illum rogans et requirens ad executionem officii, ſibi per idem commiſſi, debite procedere: *Quodque* officium dictus ſuſcepit, ac dict. cartam in manibus ſuis accepit, mihique notario publico per me, teſtibus et aſtantibus, perlegendam, et in ſermone vulgari explicandam, et publicandam, tradidit; Quod feci; et cujus praecepti ſaſinae in dict. carta content. tenor ſequitur, et eſt talis. *Inſuper*, &c. (inſere praeceptum), *poſt* cujus cartae praeceptique ſaſinae ſupra inſert. inibi content. perlectionem, explicationem, et publicationem, praefatus tanquam vicecomes in hac parte antedict. virtute dict. praecepti ſaſinae, ac officii

Delivery to the ſheriff in that part.

Acceptance.

Delivery to the notary.

Publication by him.

Inſertion of the precept.

Delivery of ſeiſine.

officii vicecomitis, ſibi per idem commiſſi, ac diſpenſationis praedict. *dedit* et *tradidit* praefato C. D. *ſaſinam totarum* et *integrarum* praedict. terrarum aliorumque ſupra recitat. cum omnibus pertinen. earund. jacen. et deſcript. ut praefertur (*b*); quamque ſaſinam dictus vicecomes dedit per terrae et lapidis fundi dict. terrarum de praefato tanquam actornata, pro et in nomine dict. C. D. traditionem et deliberationem, ut moris eſt, ſecundum formam et tenorem dict. cartae et diſpenſationis inibi content. et praecepti ſaſinae antea inſert. in omnibus, nemine contradicente, ſeu in contrarium opponente; *ſuper quibus* omnibus et ſingulis, &c.

Attorney's taking of inſtruments.

If holding of the Prince, or lying within a ſtewartry, there will be ſome ſmall variations, which may be eaſily made, from attending to the terms of the warrant.

If the charter proceeds upon a tailzie, it will be at letter (*a*): ' *In favorem* dict. C. ' D. haeredibus maſculis et talliae, ſubtus ' mentionat. Per quam cartam praefatus ' S. D. N. Rex, &c. cum aviſamento et ' conſenſu praedict. cum et ſub proviſionibus, conditionibus, reſervationibus, et limita-

—if on a tailzie.

' mita-

'mitationibus, clauſulis irritantibus et re-
'ſolutivis, inibi et poſtea ſpecificatis, dedit,
'&c. dicto C. D. et haeredibus ſuis maſcu-
'lis de ejus corpore;' (here inſert the diſ-
poſitive clauſe of the tailzie), 'una cum
'omni jure, &c. et hoc cum et ſub provi-
'ſionibus, &c. ſubſcriptis,' viz. (here inſert
the proviſions, &c.) and at (*b*) ſay, 'et hoc
'cum et ſub proviſionibus, conditionibus,
'reſervationibus, limitationibus, clauſulis
'irritantibus et reſolutivis, reſpective prae-
'ſcript.'

—if to an heir, ſerved heir in general.

If to a perſon ſerved heir in general, it will have this additional narrative: 'Ac
'*etiam* dictus actornatus *habens*, et in ſuis
'manibus *tenens*, retornatum generalis ſer-
'vitii in favorem dicti —— uti haeredis
'in generali dict. —— ejus patris nunc
'demortui coram —— datum et retorna-
'tum ad cancellariam —— die menſis
'—— anno milleſimo ſeptingenteſimo oc-
'togeſimo —— per quem retornatum dic-
'tus —— nunc jus habet ad dictas terras
'aliaque ſupra ſcript. et ad praedictam
'cartam reſignationis, et praeceptum ſaſinae
'inibi content. quod remanet adhuc infec-
Delivery 'tum; *quamque* cartam et retornatum ge-
'neralis

'neralis ſervitii, &c. dictam cartam, praeceptum ſaſinae inibi content. una cum retornatu generalis ſervitii, ſupra recitat. in manibus ſuis recepit, &c. *Poſt* cujus praecepti ſaſinae ſupra inſert. et retornatus generalis ſervitii perlectionem, &c. diſpenſationis praedict. et dict. retornatus generalis ſervitii, per quem dict. —— habet jus ad dictas terras aliaque, &c. dicto —— tanquam jus habenti modo ante mentionato, &c. ſecundum formam et tenorem antedict. cartae et retornatus generalis ſervitii, in omnibus punctis.'

to the ſheriff in that part, &c.

Inſtrument of reſignation *ad remanentiam*, on the procuratory of reſignation contained in a diſpoſition by the vaſſal to his ſuperior, will be in theſe terms:

Inſtrument of reſignation ad remanentiam.

Inſtrument of Reſignation ad remanentiam.

In the name of God. Amen. *Be it known* to all men, by this preſent public inſtrument, *that*, upon the —— day of —— one thouſand ſeven hundred, &c. years,

Invocation.

Day of the month, & year of God.

King's reign.

years, and of the reign of, &c. *in preſence* of A. B. Eſq; of C. ſuperior of the lands after-mentioned; *and alſo* in preſence of me notary-public, and witneſſes after deſigned, ſubſcribing, being convened within the houſe of ——— *compeared* ——— as procurator for, and in name of C. D. of E. to the effect under-written, ſpecially conſtitute, by the procuratory of reſignation after-mentioned, contained in a diſpoſition of the lands and others underwritten, dated ——— made and granted by the ſaid C. D. as proprietor and vaſſal therein, to and in favour of the ſaid A. B. his heirs and aſſignees whatſoever, *and* there, with all due reverence and humility, as became the ſaid

Compearance of the procurator.

Reſignation.

as procurator foreſaid, *genibus flexis*, purely and ſimply by ſtaff and baton, as uſe is, *reſigned*, *renounced*, *ſurrendered*, *upgave*, *overgave*, and *delivered* from the ſaid C. D. his heirs and ſucceſſors, to and in favour of the ſaid A. B. his heirs and aſſignees, *all* and *whole* (inſert the lands), with all right, title, or intereſt he had, or could pretend thereto, *in the hands*, and in favour of the ſaid A. B. and his foreſaids,

ad perpetuam remanentiam, to the effect the ſaid C. D.'s right of property of the ſaid lands being conſolidated in the perſon of the ſaid A. B. and his foreſaids, with their own right of ſuperiority of the ſame, the ſaid lands and pertinents may remain and abide with them, abſolutely and irredeemably, in all time coming, after the form and tenor of the ſaid diſpoſition and procuratory of reſignation, produced, and by me notary-public read and publiſhed, in preſence of the witneſſes ſubſcribing in all points; *which* reſignation the ſaid A. B. admitted and accepted of, by receiving the foreſaid ſtaff and baton in his hands from the ſaid procurator foreſaid, reſigner thereof, to the end and effect above ſpecified; *whereupon*, and upon all and ſundry the premiſſes, the ſaid A. B. aſked and took inſtruments, one or more, in the hands of me notary-public, ſubſcribing. Theſe things were ſo done within the ſaid —— betwixt the hours, &c. (as in inſtrument of ſeiſine.)

Ad remanentiam.

Acceptance thereof.

Taking of inſtruments.

For *inſtrument of ſeiſine* within a royal borough, ſee end of the *title on charters by progreſs*.

—on deed of mortification.

Inſtrument of Seiſine upon *Deed of Mortification.*

Invocation, &c. Narrative.

In, &c. *compeared* as procurator, &c. having, &c. a diſpoſition or deed of mortification, dated, &c. and containing the precept of ſeiſine after inſert, made and granted by A. B. of C. whereby, for the cauſes and with and under the conditions and proviſions therein ſpecified, the ſaid A. B. *gave*, *granted*, *diſponed*, and *mortified*, to and in favour of the Rev. Mr miniſter of the goſpel at and and elders of the ſaid pariſh, and to their ſucceſſors in their reſpective offices, as truſtees for and to the uſe and behoof of the poor and indigent perſons therein mentioned, *all* and *whole* (inſert the lands), together with all right, title, &c. as the ſaid diſpoſition or deed of mortification, containing obligement to infeft by a ſingle infeftment *a me*; clauſe of warrandice; aſſignation to the rents and writs;

writs; the precept of ſeiſine after inſert, and ſeveral other clauſes in itſelf, more fully bears.

Inſtrument of ſeiſine upon a *diſpoſition of teinds*, will proceed on this narrative.

Inſtrument of Seiſine on Diſpoſition of Teinds.

Having, &c. a diſpoſition, of date, &c. and containing therein the precept of ſeiſine after inſert, made and granted by A. B. Eſq; of C. titular of the teinds therein after diſponed, whereby (for the cauſes therein ſpecified), the ſaid A. B. *ſold*, *alienated*, and *diſponed*, to and in favours of the ſaid D. E. his heirs and aſſignees whatever, heritably and irredeemably, *all* and *whole* the teinds, parſonage and vicarage, of theſe parts and portions of the lands and barony of C. therein and after-mentioned, viz. (here inſert them), together with all right, title, intereſt, which he, his predeceſſors or authors, heirs or ſucceſſors, had, have, or any ways might have, claim, or pretend to, the teinds, parſonage and vicarage, Narrative.

vicarage, above diſponed, fruits, rents, and emoluments of the ſame, or any part thereof, in time coming; as the ſaid diſpoſition, containing obligement to infeft by two ſeveral infeftments, and manners of holding, *a me et de me*; procuratory of reſignation; clauſe of warrandice; aſſignation to the writs and rents; the precept of ſeiſine after inſert, and ſeveral other clauſes, more fully bears: And in the *delivery of ſeiſine*, 'by delivery to the ſaid ——— as attor-'ney for, and in name of the ſaid D. E. 'of a handful of graſs and corn for the 'ſaid teinds, parſonage and vicarage, as 'uſe is, after the form and tenor,' &c.

Delivery of ſeiſine.

TITLE

TITLE II.

Diſpoſitions and Aſſignations.

THE Diſpoſitions, in the preceding Title, being only perſonal rights before infeftment thereon, the lands are tranſmiſſible from the diſponee by diſpoſition and aſſignation; whereby the aſſignee is veſted in the cedent's right to the unexecuted procuratory of reſignation or precept of ſeiſine, or other title in his perſon, and obtains himſelf infeft in virtue thereof:—Which diſpoſition and aſſignation may be of the following tenor:

Diſpo-

Diſpoſition and Aſſignation.

Diſpoſition and Aſſignation to Lands, and to a Diſpoſition thereof before Infeftment.

Premiſſes. *Be it known* to all men by theſe preſents, *me* A. B. of C. as having right in manner after-mentioned, *whereas* C. D. of E. heritable proprietor of the lands and others, with the pertinents after-diſponed, by his diſpoſition, dated the —— day of —— (for the cauſes therein ſpecified), *ſold*, *alienated*, and *diſponed*, to me, my heirs, and aſſignees whatſoever, heritably and irredeemably, *all* and *whole* (inſert the lands), together with all right, title, intereſt, claim of right, property and poſſeſſion petitory and poſſeſſory, which the ſaid C. D. had, or any ways might have, or pretend thereto; to be holden by double infeftments, and two manners of holding, as mentioned in the ſaid diſpoſition; as the ſame containing procuratory of reſignation, precept of ſeiſine, clauſe of abſolute warrandice, and ſeveral other clauſes and obligements of the date foreſaid, more fully bears (*a*).

Granter.

Narrative.

And

And ſeeing that D. E. merchant in F. has made payment to me of the ſum of —— as the agreed worth and price of the ſaid lands and others, with the pertinents aftermentioned; whereof I grant the receipt, and diſcharge the ſaid D. E. his heirs, executors, and all others whom it concerns, of the ſame; renouncing all exceptions to the contrary. *Therefore wit ye me* to have *ſold*, *alienated*, and *diſponed*, as I by theſe preſents *ſell*, *alienate*, and *diſpone*, to and in favour of the ſaid D. E. his heirs and aſſignees whatſoever, heritably and irredeemably, *all* and *whole* the ſaid (repeat the lands), lying, bounded, and poſſeſſed, in manner particularly above mentioned; together with all right, title, intereſt, which I have, or any ways may have, claim, or pretend, to the ſaid lands, with the pertinents, or to any part or portion thereof, in time coming. *And* I hereby *make* and *conſtitute* the ſaid D. E. and his foreſaids, my lawful ceſſioners and aſſignees, *not only* in and to the whole writs and evidents, rights, titles, and ſecurities of and concerning the ſaid lands and others, with the pertinents, made and granted, or that may be any ways conceived

Subſcription.

Diſpoſitive.

Aſſignation to the writs,

ceived or interpreted, in favours of me, my predeceſſors or authors, from whom I have or may derive right any manner of way, procuratories of reſignation, and precepts of ſeiſine therein contained, and whole other heads, clauſes, tenor, and contents thereof, with all that has followed, or is competent to follow thereon; *and* particularly, without prejudice to the foreſaid generality, *in* and *to* the right and diſpoſition above narrated, granted by the ſaid C. D. to me (*b*), procuratory of reſignation, and precept of ſeiſine therein contained, and whole other heads, clauſes, tenor, and contents thereof; *with full power* to the ſaid D. E. and his foreſaids, by virtue of the ſaid procuratory of reſignation, and precept of ſeiſine, and of this preſent right and aſſignation thereto, or both or either of them, to obtain themſelves duly infeft and ſeiſed in the ſaid lands and others, with the pertinents above diſponed, to be holden in manner therein mentioned. *But alſo* in and to the rents, maills, profits, duties, and caſualties of the ſaid lands and pertinents, from and after the term of —— which is hereby declared to be the term of the

and to the diſpoſition.

Power to infeft in virtue thereof.

Aſſignation to the rents.

he said D. E.'s entry to the same (*c*); *surrogating* and *substituting* the said D. E. and his foresaids, in my full right and place of the premisses, with power to call and pursue for exhibition and delivery of the said writs and evidents, and for payment of the said rents, mails, profits, duties, and casualties, as accords, decreets thereupon to recover, discharges or conveyances thereof to grant, and generally every other thing thereanent to do, that I could have done myself, before granting of this disposition and assignation. Which lands and others, with the pertinents above disponed, with this present right and disposition thereof, and assignation above written, to the writs and evidents, and mails and duties of the same, I hereby bind and oblige me and my foresaids, to warrant to the said D. E. and his foresaids, from my own proper facts and deeds done, or to be done, in prejudice hereof, allenarly. *And further*, I oblige me, and my foresaids, to relieve the said D. E. and his foresaids, of all feu and blench duties, or other duties, payable out of the said lands and others, with the pertinents above disponed,

Warrandice.

Relief of feu and blench duties, and public burdens.

to my ſuperiors thereof, due and payable preceding the term of —— the ſaid D. E. and his foreſaids, being always bound and obliged to free and relieve me, and my foreſaids, of the ſaid feu and blench duties, and all other public burdens thereafter in time coming: *And* I have herewith delivered to the ſaid D. E. the whole writs and evidents of the ſubjects above diſponed, conform to an inventory thereof, ſubſcribed by me and the ſaid D. E. of the date of theſe preſents relative hereto, to be kept and uſed by him and his foreſaids, as their own proper writs and evidents in time coming. *And I conſent* to the regiſtration hereof in the books of council and ſeſſion, or others competent, therein to remain for preſervation; and, if needful, that all execution neceſſary in form as effeirs, paſs hereon, and thereto conſtitute

my procurators. *In witneſs*, &c.

Delivery of the writs.

Obſervations.

Tranſlation. In a *tranſlation* of the foregoing *diſpoſition and aſſignation*, ſay at letter (*a*), 'T

'which

which disposition above narrated, lands, and others thereby disponed, procuratory of resignation, and precept of seisine therein contained, and whole other heads, clauses, tenor, and contents thereof, I have right, by disposition and assignation from the said A. B. to me, dated ——— as the same more fully bears. *And seeing,*' &c. (go on with the stile of a disposition and assignation to letter (*b*), then say), *in* and to the procuratory of resignation, and precept of seisine contained in the foresaid disposition by the said C. D. to the said A. B. and whole heads, clauses, tenor, and contents thereof; *and in* and *to* the special assignation thereof, contained in the said disposition and assignation, by the said A. B. to me, *with full* power to the said F. G. * and his foresaids, by virtue of the said procuratory of resignation, and precept of seisine contained in the foresaid disposition, granted by the said C. D. to the said A. B. or both or either of them; and the said assignation thereof by him to me, and of this my

'tran-

* The person receiving the translation.

'tranſlation of the ſame, to obtain themſelves duly infeft, and ſeiſed in the ſaid 'lands, and others above diſponed, with 'the pertinents; to be holden in manner 'ſpecified in the ſaid diſpoſition, granted 'by the ſaid C. D. to the ſaid A. B.' (Then go on with the ſtile till after the aſſignation to the maills and duties, letter (*c*), and there ſay, 'Turning and *transferring* my whole 'right of the premiſſes from me and my 'foreſaids, in favours of the ſaid F. G. and 'his foreſaids, with power,' &c. (The reſt of the ſtile differs in nothing from an aſſignation.)

In whatever terms a *diſpoſition* to lands may be conceived, a *diſpoſition and aſſignation* thereto may eaſily be gathered from the above form of a *diſpoſition and aſſignation*; for, if the lands are held *de me*, it is granted with power to the perſon in whoſe favours the diſpoſition and aſſignation is made, to obtain himſelf infeft, upon the precept of ſeiſine hitherto unexecute; and, in that caſe, every thing relating to the procuratory of reſignation is left out. If held *a me*, it is granted with power to obtain himſelf infeft, in virtue of the procu-

ratory

ratory of resignation hitherto unexecute; and all that concerns the precept of seisine is left out: Any other variation that can happen will be obvious; such as proceeding from a different *consideration* or *subsumption.* Thus, under this head may be comprehended a rediſposition by a perſon to whom a feu-right had been granted for ſeparating the property from the ſuperiority, which may be in theſe terms:

Reconveyance of a Feu-right.

Reconveyance of a feu-right.

Be, &c. *me* C. D. in E. *whereas* A. B. of C. by feu-right and diſpoſition, dated the —— day of ——— on the narrative of a certain ſum of money inſtantly advanced, and paid to him in conſideration of his granting thereof, *ſold*, *alienated*, and *diſponed*, and in feu-farm and heritage *let* and *demitted* to me, my heirs and aſſignees whatſoever, heritably and irredeemably, *all* and *whole* (inſert the lands), together with all

Premiſſes.

Granter.

Narrative.

all right, &c. as the ſaid feu-right and diſpoſition, containing precept of ſeiſine, clauſe of warrandice, and ſeveral other clauſes, in itſelf more fully bears. *And whereas*, notwithſtanding the narrative therein contained, there was no value paid by me for the ſaid feu-right and diſpoſition, and the ſame was only granted for the purpoſe of ſeparating the property from the ſuperiority of the ſaid lands. *And* it being juſt and reaſonable, the ſaid purpoſe being now accompliſhed, that I ſhould grant this reconveyance in manner underwritten; *therefore wit ye me* to have *rediſponed*, *conveyed*, and *made over*, to and in favour of the ſaid A. B. his heirs and aſſignees whatſoever, heritably and irredeemably, *all* and *whole* the ſaid (inſert the lands), lying, &c. together with all right, &c. (then follows *aſſignation* to the *writs*, leaving out the words '*procuratory* '*of reſignation*,') *with* full power to the ſaid A. B. and his foreſaids, by virtue of the ſaid precept of ſeiſine contained in the ſaid feu-right and diſpoſition, and of this preſent right and aſſignation thereto, to obtain themſelves duly infeft, and ſeiſed in the

Subſumption.

Diſpoſitive.

Power to infeft.

the said lands and others, with the pertinents above disponed; to be holden in manner therein mentioned, &c. (and then go on with assignation to the rents); '*surrogating*,' &c. (*warrandice* of *writs* and *rents* from fact and deed; the assignee to free the assigner from all feu and other duties, and casualties, and public burdens, payable out of the said lands; (*delivery of the writings*; *registration*; *subscription*.)

Assignation to the rents.
Relief of feu-duty and public budens.
Delivery of the writings.
Registration.
Subscription.

Variation.

If the feu-right contains its own purpose *in gremio*, it will be, '*Be*, &c. by feu-right 'and disposition, dated the —— (for the 'causes therein specified), sold, &c. together with all right, &c. *and* it is thereby 'specially *provided* and *declared*, (here 'take in the declaration of the purpose of 'the feu-right) as the said feu-right, &c. 'bears;' and in that case leave out the additional narrative, and go on with '*And* '*it being just* and reasonable,' &c.

Variation, if the feu-right contains its own purpose *in gremio*.

Dispo-

Diſpoſition and Aſſignation of a Tenement holding Burgage.

Premiſſes. *Know all men* by theſe preſents, *me* C. D. in E.

Granter. *whereas* A. B. in E.

Narrative. by diſpoſition dated the —— day of ——— (for the cauſes therein ſpecified), *ſold*, *alienated*, and *diſponed*, to me, my heirs and aſſignees, heritably and irredeemably, *all* and *whole* (inſert the tenement), with all right, title, intereſt, claim of right, property or poſſeſſion, which the ſaid A. B. or his predeceſſors or authors, heirs or ſucceſſors, had, or any ways might have, claim, or pretend thereto; as the ſaid diſpoſition, containing procuratory of reſignation yet unexecuted, and ſeveral other clauſes, more fully bears.

Subſumption. *And now*, *ſeeing* D. E. in E. has made payment to me of the ſum of —— Sterling, as the agreed price and value of the foreſaid tenement; of which ſum I hereby grant the receipt, renouncing all objections to the contrary, and diſcharge the ſaid D. E. and his heirs and ſucceſſors of the ſame.

There-

Therefore, wit ye me to have *sold, alienated,* and *disponed,* as I hereby *sell, alienate,* and *dispone,* to the said D. E. his heirs and assignees whatsoever, heritably and irredeemably, *all* and *whole* the said (describe the subject), lying and described as aforesaid, together with all right, title, or interest I have, or can pretend thereto: *In which* subject above described, I bind and oblige me, my heirs and successors, duly and validly to infeft and seise the said D. E. and his foresaids, on their own proper charges and expences; *and* for that purpose, I hereby *assign* and *make* over to him and them the foresaid unexecuted procuratory of resignation, contained in the foresaid disposition, granted by the said A. B. to me the said C. D. *Which* subject above disponed, with the present disposition and infeftment to follow hereon, I bind and oblige me, and my foresaids, to warrant to the said D. E. and his foresaids, from my own facts and deeds allenarly. *And further,* I hereby *bind* and *oblige* me and my foresaids, to free and relieve the said D. E. and his foresaids, of all cess due and payable for the said subjects, at and preceding the ——

Dispositive.

Assignation to the procuratory.

Warrandice.

Relief of public burdens.

day of ——— and of all other public burdens at and preceding the term of Whitſunday in the ſaid year. *Moreover*, I hereby *aſſign*, *transfer*, and *make over* to the ſaid D. E. *not only* the whole writs and evidents, old and new, of and concerning the ſaid ſubject; and particularly, without prejudice to the ſaid generality, the foreſaid diſpoſition by the ſaid A. B. to me, clauſe of warrandice, and whole other clauſes therein contained, with all that has followed, or is competent to follow thereon; *but alſo* the rents, maills, and duties of the ſaid ſubject, from and ſince the term of Whitſunday ——— which, notwithſtanding the date hereof, is hereby declared to have been the ſaid D. E.'s entry thereto, and in time coming; *with power* to the ſaid D. E. and his foreſaids, to ſue for delivery and implement of the ſaid writs and evidents, and for payment of the ſaid rents, maills, and duties, output and input tenants, and generally every other thing anent the premiſſes to do, which I could have done before granting hereof; *which* aſſignation above written to the writs, evidents, and rents, maills and duties, I bind

Aſſignation to the writs

and rents.

bind and oblige me, and my foreſaids, to warrant to the ſaid D. E. and his foreſaids as follows, viz. as to the writs and evidents at all hands, and as to the rents, maills, and duties, from my own proper facts and deeds allenarly. *And having* herewith delivered up to the ſaid D. E. the foreſaid diſpoſition by the ſaid A. B. to me, and other writs of the ſaid ſubject: *I conſent* to the regiſtration, &c.

Delivery of the writs.

Regiſtration.

It was obſerved, in the preceding title, that a general ſervice gives the perſon ſo ſerved heir, right to every ſubject on which infeftment has not followed; upon which the heir may either infeft, and afterwards diſpone, or, it is believed, might convey his right by diſpoſition and aſſignation, containing a power to make up titles in the granter's name, as heir in general. In which caſe, the diſpoſition and aſſignation might narrate the charter on diſpoſition, in favour of the granter's predeceſſor, and go on with the *diſpoſitive clauſe*, and then inſert procuratory for ſerving him heir in general, thus: ‘ *And in regard* the right of ‘ the ſaid diſpoſition is not yet veſted in ‘ my perſon by ſervice; *therefore* I bind ‘ and

—by an heir in general.

Obligation to ſerve heir in general.

'and oblige me to procure myſelf ſerved 'and retoured heir in general to my ſaid 'deceaſed father; *and* for the ſaid pur- 'poſe, I hereby *make* and *conſtitute*

Procuratory for ſerving heir in general.

' my lawful 'and irrevocable procurators for me, and 'in my name, to purchaſe brieves furth of 'his Majeſty's chancery, for obtaining me 'ſerved and retoured heir in general to my 'ſaid deceaſed father, to cauſe proclaim the 'brieves, expede the ſervice, compear for 'me, and take inſtruments thereupon, re- 'tour the ſame to the chancery, and pro- 'cure extracts of the ſame therefrom, and 'all other writs neceſſary, and generally 'every other thing thereanent to do, that 'I could do, if perſonally preſent: *And* 'being ſo ſerved, and retoured heir in ge- 'neral to my ſaid deceaſed father, I now as 'then, and then as now.' (Here may follow aſſignation to the unexecute procuratory of reſignation, and precept of ſeiſine, or either of them, according to the nature of the holding.)

Diſpoſition and *aſſignation* to a *charter of reſignation*, is of the ſame nature with the fore-

foregoing dispositions and assignations, and may be in these terms:

Disposition and Assignation of the superiority of Lands, and a Charter of Resignation thereof.

—*of a superiority & charter of resignation.*

Know all men, by these presents, *that I* A. B. Esq; of C. *whereas* C. D. in E. hath made payment to me of a certain sum of money, as the agreed price, full worth, and value of the superiority of the lands and others after disponed: *Therefore, wit ye me* to have *sold*, *alienated*, and *disponed*, as I *do* hereby *sell*, *alienate*, and *dispone*, from me, my heirs and successors, *to* and *in* favours of the said C. D. (*a*), his heirs and assignees whomsoever, heritably and irredeemably, *all* and *whole* (insert the lands), together with all right, title, interest, claim of right, property, and possession, which I, my predecessors or authors, had, have, or any ways may have, claim, or pretend thereto, or to any part or portion

Premisses.
Granter.
Receiver.
Consideration.
Dispositive.

Obligement to infeft.

tion thereof. *And* I *bind* and *oblige* me, and my foreſaids, duly and validly to infeft and ſeiſe the ſaid C. D. and his foreſaids, heritably and irredeemably, in the lands and others above mentioned; *and*, for that purpoſe, I hereby *aſſign* and *convey* to the ſaid C. D. and his foreſaids, a charter of reſignation, under the great ſeal, in my favours, dated —— and ſealed the —— thereafter, and the unexecuted precept of ſeiſine therein contained, ſo far as reſpects the ſaid lands; *with* full power to him or them to obtain themſelves infeft in virtue thereof, *omni habili modo*. *Moreover*, I hereby *make*, *conſtitute*, and *ordain* the ſaid C. D. and his foreſaids, my lawful ceſſioners and aſſignees, *not only* in and to the whole rents, maills, and duties of the ſaid lands, ſo far as I have right thereto; and particularly in and to the feu-duties, ſervices, and caſualties, due and payable by the reſpective vaſſals in the ſaid lands, from and after the term of —— which is hereby declared to be the ſaid C. D.'s entry, notwithſtanding the date hereof; with full power to the ſaid C. D. and his foreſaids, to intromit with, uplift, and diſcharge the

Aſſignation to the charter.

Power to infeft in virtue thereof.

Aſſignation to the rents and feu-duties, &c.

ſaid

ſaid maills and duties, or feu-duties and caſualties of ſuperiority above aſſigned; and to uſe and diſpoſe thereupon at pleaſure, and, in general, every other thing thereanent to do which I could have done myſelf before granting hereof: *But alſo* in and to the whole rights, title-deeds, and ſecurities of, and concerning the ſaid lands and others; and particularly in and to a diſpoſition thereof, dated —— granted to J. K. in —— by G. H. Eſq; of —— and whole clauſes, obligations, and conditions therein contained, charter under the great ſeal, in favour of the ſaid J. K. dated —— ſealed —— and the inſtrument of ſeiſine following thereon, bearing date the —— and recorded in —— the ——— and the diſpoſition by the ſaid J. K. in my favour, dated —— and whole clauſes and obligations therein contained, with the charter of reſignation foreſaid expede thereupon; *ſurrogating* and *ſubſtituting* the ſaid C. D. and his foreſaids, in my full right and place of the premiſſes for ever. *And* I do further *bind* and *oblige* me, and my foreſaids, to warrant the above aſſignation to the rents, maills, and duties, or feu-duties and caſualties

Aſſignation to the writings.

caſualties of ſuperiority, from all facts and deeds, done or to be done by me and my foreſaids; and, in ſo far as concerns the ſaid writs and evidents, at all hands, and againſt all deadly, as law will. (Regiſtration and ſubſcription clauſes.)

It has been already mentioned, that temporary rights, ſuch as rights in liferent, are effectual as freehold qualifications.—Theſe are generally conſtituted by diſpoſition and aſſignation, of the following, or ſimilar terms:

—of a ſuperiority & charter of reſignation in liferent.

Diſpoſition and Aſſignation to the ſuperiority of Lands, and to a Charter of Reſignation thereof in liferent.

Premiſſes. *Know all men*, by theſe preſents, *that I*,
Granter. A. B. Eſq; of C. for certain onerous cauſes and conſiderations me moving thereunto,
Diſpoſitive. have *ſold*, *alienated*, and *diſponed*, as I do hereby ſell, alienate, and diſpone, to and
Receiver. in favour of C. D. in E. in liferent, during all the days of his life, and to myſelf, my heirs

heirs or assignees in fee, *all* and *whole* (insert the lands), together with all right, title, interest, I have, or can pretend thereto, during the life of the said C. D. *And* I hereby *assign* and *convey* to the said C. D. in liferent, and myself, and my foresaids, in fee, a charter of resignation, under the great seal, in my favours, dated —— and sealed —— thereafter, and the unexecute precept of seisine therein contained, so far as respects the said lands, and others above disponed; *with* full power to obtain himself infeft and seised in the terms above mentioned, in the foresaid lands and others, with the pertinents, *omni habili modo.*— *Moreover*, I hereby *make*, *constitute*, and *ordain* the said C. D. my lawful cessioner and assignee, *not only* in and to the rents, maills, and duties of the said lands, so far as I have right thereto; and particularly in and to the feu-duties, services, and casualties, due and payable by the respective vassals in the said lands, from and after the term of —— which is hereby declared to be the said D. E.'s entry thereto, notwithstanding the date hereof; *but also in* and to the whole writs, dispositions, procura-

Assignation to the charter & precept of seisine.

With power to infeft thereon.

Assignation to the rents and feu-duties.

Writs.

tories, and inſtruments of reſignation, charters, precepts, retours, precepts and inſtruments of ſeiſine, and whole other writs, titles, and ſecurities, made, granted, and conceived in favour of me, my predeceſſors or authors, of and concerning the ſaid lands, with the procuratories of reſignation, clauſes of warrandice, and whole other clauſes and obligements therein contained; *ſurrogating* and *ſubſtituting* the ſaid C. D. in my full right of the premiſſes during his lifetime, with full power to intromit with, uplift, and diſcharge the ſaid maills and duties, or feu-duties and caſualties of ſuperiority, and to uſe and diſpoſe thereupon at pleaſure, and to purſue for implement of the ſaid writs, and generally to do every other thing in relation to the premiſſes I could have done before granting hereof; *which* aſſignation to the rents, feu-duties, and caſualties, and writs and evidents, I oblige myſelf, my heirs, and ſucceſſors, to warrant to the ſaid C. D. from our own facts and deeds only; and conſent to the regiſtration, &c. (Regiſtration and ſubſcription clauſes.)

Regiſtration and ſubſcription.

This

This disposition and assignation, and the preceding, suppose the property to have been separated from the superiority.

Variation.

Variation.

This disposition and assignation may proceed with narrating the granter's right, as in the first example of a disposition and assignation, thus: 'Be, &c. me A. B. Esq; 'of C. *whereas* in virtue of a procuratory 'of resignation, dated the —— day of '—— last, I *resigned* and *surrendered all* 'and *whole* the lands and others after-men- 'tioned, with certain other lands belong- 'ing to me, whereupon I obtained a char- 'ter of resignation of the said lands, under 'the seal appointed by the treaty of Union 'to be used in Scotland, in place of the 'great seal thereof, dated the —— day of '—— last, sealed the —— day of —— 'current, as the said procuratory of resig- 'nation and charter more fully bear. *And* '*now*, for certain onerous causes and con- 'siderations me moving, *wit ye me* to have 'sold,

Narrative of the charter, &c.

'ſold, &c. together, &c. and I hereby aſ-
'ſign and convey to the ſaid C. D. &c. the
'foreſaid charter of reſignation in my fa-
'vours, and the unexecute precept,' &c.

Obſervation.

It was formerly cuſtomary, in conſe-
quence of ſuch diſpoſition and aſſigna-
tion, to take infeftment in favour of the
diſponee in liferent, and the granter in
fee, by which the precept was exhauſt-
ed, and no new liferent qualification
could be made without a new charter,
which was expenſive: But it is now the
practice to take infeftment only in name
of the liferenter, by which means the pre-
cept for giving the infeftment remains in-
tire *quoad* the fee; and the ſame charter
may be afterwards uſed for the purpoſe of
creating a new liferent qualification upon
the death or renounciation of the former
liferenter.

Diſpo-

Disposition and Assignation by a Purchaser at a Judicial Sale.

I, A. B. in E. *whereas* at a judicial sale of the lands and estate of C. which pertained to J. M. of C. I offered for the —— lot of the said lands under sale —— pounds Sterling, and was the last and highest offerer. *Therefore*, and in respect I had found caution for the price of the said —— lot, in terms of the articles of roup, the Lords of Council and Session, by their decreet of sale, dated the —— day of —— years, *sold*, *adjudged*, *decerned*, and *declared*, *all* and *whole* the lands of ——, with the pertinents, as the same are more particularly described in the original rights and infeftments thereof, and in the prepared state of the process and act of roup, together with all right, title, and interest which the said J. M. or his authors had, have, or any ways may have, claim, or pretend thereto, *to pertain* and belong to me, my heirs, and assignees, heritably and irredeemably, upon payment or consignation of

Granter.

Narrative.

of the foreſaid price, with the annualrent thereof, from the time, and in the terms mentioned in the ſaid conditions of roup, to the creditors as they ſhould be ranked and preferred thereon. *And whereas* C. D. of E. has made payment to me of a certain ſum of money equivalent to the foreſaid ſum and intereſt, whereof I grant the receipt, in conſideration of my granting theſe preſents, and conveying the debts ranked on the lands after diſponed, and paid by me, which I have accordingly done, of this date; *therefore* I hereby *ſell, alienate, diſpone, convey,* and *make over,* to and in favours of the ſaid C. D. his heirs and aſſignees whomſoever, *all* and *whole* the —— merk-land of ——— of old extent, with the manor place, houſes, biggings, yards, orchyards, milns, multures, woods, fiſhings, parts, pendicles, and pertinents thereof, lying in the pariſh of —— and ſhire of ——— and as the ſame are more particularly deſcribed in the original rights and infeftments of the ſame, *and* which are the ſubjects contained in the ſaid —— lot purchaſed by me as aforeſaid; together with all right, title, intereſt, which

Subſumption.

Diſpoſitive.

I

I have, or can pretend thereto, by virtue of the said decreet of sale, in may favours, or otherwise; *and* I hereby *assign*, *convey*, and *make over*, to and in favour of the said C. D. and his foresaids, the whole writs, rights, title-deeds, and securities, made, granted, or conceived in favours of the said J. M. and his authors and predecessors, of and concerning the premisses, with the act and minutes of roup, the foresaid decreet of sale, and act of division of the price, with all that has followed, or can follow thereon; *surrogating* and *substituting* the said G. D. and his foresaids, in my full right and place of the premisses; *with* power to them, in virtue of the foresaid decreet of sale, and this my assignation thereto, or by any other habile manner, to obtain themselves duly infeft and seised in the foresaid lands and others, and generally every other thing to do, which I could do myself, before granting hereof. *Also*, I hereby *assign*, *convey*, and *make over*, to and in favour of the said C. D. and his foresaids, the whole rents, maills, and duties, of the foresaid lands, from and after the term of —— which is hereby declared to

Assignation to the writs.

Power to obtain infeftment.

Assignation to the rents.

to have been his entry thereto, notwithſtanding the date hereof, and in all time coming. *And* I oblige me, and my foreſaids, to warrant this diſpoſition and aſſignation to the ſaid C. D. and his foreſaids, from my own proper facts and deeds only, done, or to be done, in prejudice hereof: *And* I have herewith delivered up to the ſaid C. D. the foreſaid decreet of ſale, and the grounds of debt ranked on the ſaid lands, and paid by me, and conveyances of the ſame, in my favours, agreeable to an inventory of the ſame, ſigned by me, of this date, as relative hereto, to be uſed as his own proper evidents, in all time coming. *And I conſent* to the regiſtration hereof in the books of council and ſeſſion, &c. for preſervation, &c. (Subſcription clauſe.)

Warrandice.

Delivery of the writs.

Regiſtration.

Upon this decreet of ſale, if the lands are held of the crown, the purchaſer, or his aſſignee, preſents a ſignature, and obtains a charter of ſale, and is infeft on the precept of ſeiſine therein contained: If held of a ſubject ſuperior, he grants a charter of ſale; or, on his refuſal, the court of ſeſſion will, on application, iſſue horning againſt

Method of obtaining infeftment.

againſt him, and, if he diſobey, application may be made to his ſuperior, againſt whom, in caſe of refuſal, horning may alſo be obtained, and ſo upwards to the crown.

Diſpoſition and Aſſignation to a decreet of Adjudication.

—to a decreet of adjudication.

Be it known to all men by theſe preſents, Premiſſes.
me C. D. merchant in E. *whereas* A. B. of Granter.
C. by his bond, dated the —— day of —— Narrative.
years (for the cauſes therein ſpecified), *bound* and *obliged* him, his heirs, and ſucceſſors, to have contented and paid to me, my heirs, or aſſignees, the ſum of —— Sterling money, betwixt and the term of —— then next to come, with —— money foreſaid, of penalty and liquidate expences, in caſe of failzie; together alſo with the due and ordinary annualrent of the ſaid principal ſum, from the term of —— then laſt, to the foreſaid term of payment, and hereafter during the not-payment there-

of; as the ſaid bond, of the date foreſaid, regiſtered in the books of council and ſeſſion, upon the —— day of ——— years, with letters of horning, caption, and inhibition following thereon, at more length bears. *And whereas* I having raiſed action of adjudication at my inſtance, before the Lords of Council and Seſſion, againſt the ſaid A. B. the ſaid Lords, by their decreet, of date the —— day of —— years, *adjudged*, *decerned*, and *declared* the lands, baronies, teinds, mills, woods, fiſhings, ground-right and property thereof, and others therein expreſſed, pertaining and belonging to the ſaid A. B. *to pertain* and *belong* to me the ſaid C. D. in payment and ſatisfaction to me of the ſums of money contained in the ſaid bond, extending, at the date of the ſaid decreet, to the ſum of ———, and of the annualrent of the ſaid accumulate ſum during the not redemption; as the ſaid decreet, and abbreviate thereof, duly recorded conform to act of parliament, alſo bears (*a*). *And ſeeing* D. E. in F. has made payment to me of the foreſaid accumulate ſum and annualrents thereof ſince the ſaid —— day of ——

Subſumption.

amounting

amounting to the sum of ——, whereof I grant the receipt, renouncing all objections to the contrary; *therefore wit ye me*, the said C. D. to have *sold*, *alienated*, and *disponed*, as I by these presents *sell*, *alienate*, and *dispone*, *to* and *in* favours of the said D. E. his heirs and assignees whatsoever, heritably, with and under the reversion of the law, competent to the said A. B. the lands, baronies, and others under-written, specified and contained in the said decreet of adjudication, viz.—(here insert the lands), together with all right, title, interest, claim of right, property and possession, which I have, or any ways may have, claim, or pretend to the lands, baronies, and others foresaid, by virtue of the foresaid decreet of adjudication, for payment of the sums of money after assigned. *And further*, for the causes foresaid, *wit ye me* to have *assigned*, *conveyed*, and *disponed*, as I by these presents *assign*, *convey*, and *dispone* to the said D. E. and his foresaids, the foresaid accumulated sum of —— money, with the whole bygone annualrents thereof resting unpaid, since the —— day of —— and in time coming during

Dispositive.

Assignation to the accumulated sum, and interest;

during the not payment or redemption of the foreſaid lands and others above written; or, in the option of the ſaid D. E. the maills and duties of the foreſaid lands, baronies, and others above mentioned, during the ſaid not-redemption or not-payment; together with the foreſaid original bond, granted by the ſaid A. B. to me, with horning, caption, and other diligence following thereon, and alſo with the foreſaid decreet of adjudication and abbreviate of the ſame, in ſo far as they may be extended to the ſaid principal accumulated ſum, and annualrents thereof, ſince the ſaid —— day of ——; *ſurrogating* and *ſubſtituting* the ſaid D. E. and his foreſaids, in my full right and place of the premiſſes, with full power to them to obtain themſelves infeft upon the foreſaid decreet of adjudication, in the lands, baronies, and others, thereby adjudged (*b*), and to call and purſue for, uplift, and receive, the ſums above aſſigned, and annualrents, or maills and duties of the ſaid lands, decreets therefor to obtain and recover, and cauſe the ſame be put to execution, compone, tranſact, and agree thereanent, acquittances and diſcharges to grant

or to the rents,

and bond and diligence.

grant upon receipt of the foresaid sums, and mails and duties, which shall be sufficient to the receivers; and generally all and sundry other things requisite anent the premisses to do, use, and exerce, as freely in all respects as I might have done before granting these presents (*c*): *Which* disposition and assignation above written, I bind and oblige myself, and my foresaids, to warrant from our own proper facts and deeds, done or to be done, in prejudice hereof, allenarly; that is to say, that I have not made nor granted, nor shall we make or grant any other assignation, transmission, disposition, discharge, or other right or security, in prejudice hereof; *and* I have herewith delivered to the said D. E. the foresaid decreet of adjudication, abbreviate thereof, with the extract of the original bond, and letters of horning, caption, and inhibition following thereon, to be kept and used by him, and his foresaids, as their own proper evidents, at their pleasure, in time coming: *And consent*, &c. (Registration for preservation and execution, and subscription clause.)

Warrandice.

Delivery of the writs.

Registration. Subscription.

Where

Method of obtaining infeftment.

Where the lands hold of the crown, the firſt adjudger generally preſents a ſignature, and takes out a crown charter, and is infeft on the precept therein contained; and the other adjudgers, within year and day, claiming *a pari paſſu* preference, muſt repeat to him the expence thereof.—Where the lands hold of a ſubject, upon bill to the Lords of Council and Seſſion, horning will be iſſued againſt the ſuperior for infefting the vaſſal. If the ſuperior has been charged by the adjudger, ſay, at letter (*a*), 'upon which decreet I raiſed letters of 'horning againſt ſuperiors; and, in virtue 'thereof, cauſed ——— meſſenger paſs, '&c. (narrate the execution of charge and 'ſay), as the ſaid letters of horning againſt 'ſuperiors, and execution thereof, bear;' and at letter (*b*), 'by the ſuperior of the 'ſaid lands, in conſequence of the charge 'already given, at my inſtance, as afore-'ſaid.'

Variation, if horning is raiſed & executed againſt the ſuperior.

Obſervation.

But it is commonly only the firſt adjudger who takes out a charter, or charges the ſuperior; and the charge is conſidered as completing the diligence.

The

The above aſſignation may be granted *to the purchaſer of the lands* from the debtor *as a collateral ſecurity* of his purchaſe; and, if the lands are ſold by private bargain, ſay, at letter (*a*), 'And the ſaid A. B. having ſold the ſaid lands, by private bargain, to D. E. in F. and it having been ſtipulated and agreed upon, that the price thereof ſhould be applied in payment of debts due by the ſaid A. B. and that aſſignations ſhould be taken thereto in favour of the ſaid D. E. to be uſed and employed by him as a further ſecurity of his purchaſe only, but nowiſe to affect or militate againſt the perſon of the ſaid A. B. or his ſucceſſors, or any other eſtate or effects that do, or ſhall pertain and belong to them: *And ſeeing* the ſaid D. E. has made payment,' &c. and in the diſpoſitive, leave out 'under the reverſion of the law competent to the ſaid A. B.' and at letter (*c*) ſay, 'to be uſed for a further ſecurity of the purchaſe of the ſaid lands, and pertinents only, but nowiſe to affect or militate againſt the perſon of the ſaid A. B. or any other eſtate or effects that do, or ſhall pertain and belong to him, 'the

Variation, if granted as a collateral ſecurity.

If the lands are ſold by private bargain.

'the ſaid A. B. his heirs and ſucceſſors,
'being hereby exonered and diſcharged of
'the foreſaid bond and ſums therein con-
'tained, ſo far as extends to their perſons,
'or other eſtate or effects, except the ſaid
'lands and eſtate of ——; *which diſpoſi-*
'*tion* and *aſſignation*,' &c.

—if by voluntary roup.

If the lands are expoſed to voluntary roup, ſay at letter (*a*), 'And the ſaid lands 'having been expoſed to public voluntary 'roup, in terms of certain articles and con-'ditions of roup and ſale, whereby it was 'ſtipulated, &c. in favour of the purchaſer, 'to be uſed, &c. *And* D. E. in F. being the 'laſt and higheſt offerer, in terms of the ſaid 'articles and conditions of roup, was pre-'ferred to the purchaſe: *And ſeeing*,' &c. and in the *diſpoſitive*, leave out 'under 'the reverſion of the law competent to the 'ſaid A. B.' and at letter (*c*), 'to be uſed 'for a further ſecurity,' &c.

—it by judicial ſale.

If the lands are ſold by a judicial ſale, ſay at letter (*a*), 'And whereas in an ac-'tion of ranking and ſale, raiſed and pur-'ſued before the Lords of Council and 'Seſſion, at the inſtance of ——— againſt 'the ſaid A. B. and his creditors, the ſaid

'lands

'lands being exposed to public roup, the 'said Lords, by their decreet of sale, dated 'the —— day of —— *sold*, *adjudged*, *de-* 'cerned, and *declared*, *all* and *whole*, &c. 'to *pertain* and *belong* to D. E. in F. his 'heirs and assignees, upon payment to the 'creditors of the said A. B. as they should 'be ranked and preferred, by decreet of 'ranking to be pronounced by the said 'Lords, of the sum of —— Sterling mo- 'ney, at the term of —— with interest 'thereof from the term of —— preceding, 'during the not payment: The creditors, 'on the other hand, being thereby bound, 'how soon they actually obtained payment 'of their respective proportions of the 'purchase-money, to transmit their several 'rights and diligences, in favour of the 'said D. E. and his foresaids, *omni habili* 'modo, in so far as his purchase stood 'therewith affected, and to grant abso- 'lute warrandice to the extent of the par- 'ticular sums they should receive; as the 'said decreet of sale and acts and warrants 'relative thereto bear. *And whereas*, by 'a scheme of division of the said price, ap- 'proven of by the said Lords, I am stated

'to draw the ſum of —— with intereſt 'thereof ——— and in time coming, du- 'ring the not payment or conſignation, as 'the ſaid ſcheme of diviſion, and act and 'warrant relative thereto, bear. *And ſeeing* 'the ſaid D. E. has made payment to me 'of the foreſaid ſum of —— conform to 'the ſaid ſcheme of diviſion, and of the 'annualrents, &c. *Therefore*,' &c. (leave out 'with and under the reverſion of the 'law competent;') and at letter (*c*), '*And* 'I *bind* and *oblige* myſelf to warrant this 'aſſignation, and lands and others therein 'contained, to the extent of the particular 'ſum received by me as above, and intereſt 'thereof from the time of eviction, if at 'any time hereafter the ſame ſhall happen, 'at all hands and againſt all deadly, as law 'will: *Providing* and *declaring* always, as 'it is hereby expreſsly *provided* and *decla-* 'red, that it ſhall be lawful to, and in the 'power of the ſaid D. E. to attribute his 'poſſeſſion either to this preſent diſpoſition 'and aſſignation, or to the decreet of ſale 'before narrated, and to uſe them either 'as ſeparate and diſtinct, or cumulative 'and corroborative rights, the one without

'prejudice

'prejudice of the other;' and leave out what follows letter (*c*), in the example above inſert, and proceed with, *and I* have 'herewith delivered,' &c. (Regiſtration and ſubſcription clauſes.)

Heir who has renounced, may grant truſt bond, on which a truſtee may adjudge and convey the adjudication to him.

Beſides the above caſes, in which aſſignations are granted to adjudications, it may be here obſerved, that an heir who has renounced to enter on account of his predeceſſor's debts, if he wiſhes afterwards to enter, on account of any reverſion that may ariſe from the eſtate, or to quarrel the rights of any of the creditors, he may grant a bond to another perſon for a ſum of money, who may thereupon purſue an adjudication, which may be conveyed to the heir.

Appriſers or adjudgers have no vote during the legal. The firſt infeft only has vote till diviſion.

By act 1681, c. 21. it is ſtatute and ordained, 'That appriſers or adjudgers ſhall 'have no vote in the ſaid elections,' (elections of commiſſioners to ſerve in parliament), 'during the legal reverſion; and 'that, after the expiry thereof, the appri'ſer or adjudger firſt infeft ſhall only have 'vote, and no other appriſer or adjudger 'coming in *pari paſſu* till their ſhares be 'divided, that the extent or valuation 'thereof

'thereof may appear; and that, during the 'legal, the heritor having right to the re-'verſion ſhall have vote.' Few creditors are enrolled upon ſuch rights; as a ſale generally takes place before the expiry of the legal.

Seller of an eſtate may grant truſt-bond to the purchaſer to lead adjudication.

Where the rights to an eſtate are not clear, or what is called a complete progreſs, the ſeller may grant a bond, containing a declaration that it ſhall only affect that eſtate, but ſhall not be the foundation of diligence againſt the granter's perſon, or any other eſtate belonging to him: Upon which bond the purchaſer takes decreet of adjudication, the legal whereof is allowed to expire; and which adjudication, with forty years poſſeſſion, will make un unqueſtionable title. If the lands are of ſufficient extent or valuation for a freehold qualification, the adjudger, or his aſſignee, may claim to be enrolled after the expiry of the legal.

Who or his aſſignee may be enrolled after expiry of the legal.

For *diſpoſitions and aſſignations to wadſets*, and to *heritable bonds*, ſee *Titles of wadſets*, and *of rights in ſecurity* and of *relief*.

Inſtru-

Inſtruments of Seiſine upon the foregoing Diſpoſitions and Aſſignations.

Inſtrument of ſeiſine upon the firſt example of a diſpoſition and aſſignation, narrates the principal diſpoſition, only in the narrative the receiver will fall to be deſigned, the procurator or attorney, not being attorney for him, and therefore not deſigned till the narrative of the diſpoſition is inſert; and, after narrating the diſpoſition, it narrates the diſpoſition and aſſignation. —upon example firſt.

—— *upon a Diſpoſition, and Diſpoſition and Aſſignation.*

'*As alſo having*, and in his hands *holding*, a diſpoſition and aſſignation, dated 'the —— day of ——— made and granted by the ſaid A. B. to the ſaid D. E. 'whereby Additional narrative.

'whereby (for the cauſes therein ſpecified) 'the ſaid A. B. *ſold*, *alienated*, and *diſponed*, 'to and in favours of the ſaid D. E. his 'heirs and aſſignees whatſoever, heritably 'and irredeemably, *all* and *whole* the lands 'and others above written; *and* ſpecially 'aſſigned to him, and his foreſaids, the diſ-'poſition above narrated (*a*) by the ſaid C. 'D. to him, procuratory of reſignation, 'and precept of ſeiſine above mentioned, 'contained in the ſaid diſpoſition, and 'whole other heads, clauſes, tenor, and 'contents thereof; with full power to the 'ſaid D. E. and his foreſaids, by virtue of 'the ſaid procuratory of reſignation, and 'precept of ſeiſine, and diſpoſition and aſ-'ſignation thereto, to obtain themſelves 'duly infeft and ſeiſed in the ſaid lands 'and others, with the pertinents above 'diſponed; as the ſaid diſpoſition and aſ-'ſignation, containing ſeveral other clauſes, 'in itſelf more fully bears: *Which* diſpo-'ſition, and diſpoſition and aſſignation 'thereto,' &c.

—— *upon*

—— *upon a Tranſlation.* —*upon a tranſlation.*

Narrative of the tranſlation.

'*And in like manner*, *having*, &c. a tranſlation thereof, made and granted by the ſaid D. E. whereby (for the cauſes therein ſpecified) the ſaid D. E. *ſold*, *alienated*, and *diſponed*, to and in favours of the ſaid F. G.' &c. (and go on to letter *a*), and in place of what follows in the foregoing example, ſay) 'by the ſaid C. D. to the ſaid A. B. procuratory of reſignation, and precept of ſeiſine contained in the ſaid diſpoſition, and whole other heads, clauſes, tenor, and contents thereof, and in and to the ſpecial aſſignation thereof, contained in the ſaid diſpoſition and aſſignation by the ſaid A. B. to him; with full power to the ſaid F. G. and his foreſaids, by virtue of the foreſaid procuratory of reſignation, and precept of ſeiſine, contained in the ſaid diſpoſition by the ſaid C. D. to the ſaid A. B. and of the aſſignation thereof by him to the ſaid D. E. and tranſlation of the ſame, to

'obtain

'obtain themſelves duly infeft and ſeiſed 'in the ſaid lands and others, above diſ- 'poned, with the pertinents; as the ſaid 'tranſlation, containing ſeveral other clauſes, 'alſo more fully bears,' &c. &c.

—upon reconveyance of a feu-right.

—— *upon a Rediſpoſition of a Feu-right.*

Additional narrative.

After narrating the feu-right, it will go on, '*as alſo having*, &c. a diſpoſition and 'aſſignation, dated —— made and grant- 'ed by the ſaid C. D. to the ſaid A. B. 'whereby (for the cauſes therein ſpecified) 'the ſaid C. D. *rediſponed*, *conveyed*, and '*made over*, to and in favour of the ſaid 'A. B. his heirs and aſſignees whatſoever, 'heritably and irredeemably, all and whole 'the lands and others above written; and 'ſpecially aſſigned to him, and his fore- 'ſaids, the feu-right and diſpoſition above 'narrated, by the ſaid A. B. to him, and 'precept of ſeiſine contained therein, with 'the whole other heads, clauſes, tenor, and

'contents

'contents thereof; with full power to the 'ſaid A. B. and his foreſaids, by virtue of 'the ſaid precept of ſeiſine, contained in 'the ſaid feu-right and diſpoſition, and of 'the ſaid diſpoſition and aſſignation there-'to, to obtain themſelves duly infeft and 'ſeiſed in the ſaid lands and others, with 'the pertinents above diſponed, as the ſaid 'diſpoſition and aſſignation, containing 'ſeveral other clauſes, alſo more fully 'bears,' &c.

Inſtrument of ſeiſine, in favours of the perſon to whom an heir had diſponed lands, with power to obtain him entered heir in general to his predeceſſor; and, being ſo entered, aſſigning the unexecute procuratory and precept, will narrate the diſpoſition, retour of the general ſervice, and diſpoſition and aſſignation; examples of all which have been already given.

—upon a diſpoſition and aſſignation by heir in general.

—— *upon a Charter of Reſignation, and Diſpoſition and Aſſignation.*

—upon a *charter of reſignation, and diſpoſition and aſſignation.*

In Dei nomine, amen. Per hoc praeſens publicum inſtrumentum cunctis pa-

Invocation.

Date.

teat et ſit notum, quod anno ab incarnatione Domini noſtri Ieſu Chriſti milleſimo ſeptingenteſimo octogeſimo —— regnique ſupremi Domini noſtri Georgii Tertii, Dei gratia, Magnae Britanniae, Franciae, et Hiberniae Regis, Fidei Defenſoris, anno vigeſimo —— menſis vero —— die ——

Compearance.

In mei notarii publici teſtiumque ſubſcriben. *praeſentia*, apud virtute diſpenſationis in carta poſtea ſpecificata content. *comparuit* tanquam actornatus, pro et in nomine C. D. in —— cujus actornati poteſtas mihi notarii publico lucide conſtabat; *necnon comparuit* tanquam vicecomes vicecomitatus de ——— ſpecialiter conſtitutus virtute praecepti ſaſinae poſtea inſerti content. in carta poſtea narrata.

Narrative.

Et ibidem dictus actornatus antedict. *exhibuit* nobis quandam cartam reſignationis, praeceptum ſaſinae poſtea inſertum in ſe continentem *conceſſam* per dict. S. D. N. Regem, cum ſpeciali aviſamento et conſenſu dominorum baronum ſui ſcaccarii in Scotia, ac ſub ſuo magno ſigillo poſtea mentionat. *in favo-*

ra-

rem A. B. de C. armigeri, *per quam* dictus S. N. D. cum aviſamento et conſenſu praedict. *dedit*, *conceſſit*, et *diſpoſuit*, ac pro ſeipſo, ſuiſque regiis ſucceſſoribus, pro perpetuo *confirmavit*, dicto A. B. haeredibus ſuis et aſſignatis quibuſcunque, haereditarie et irredimabiliter, *totas* et *integras*, &c. (inſere terras), jacen. infra parochiam de —— et vicecomitatum de —— et nonnullas alias terras inibi mentionat. modo latius ſpecificat. in dicta carta; *quae* continet diſpenſationem, pro capiendo ſaſinam omnium et ſingularum terrarum inibi content. ſeu ullius partis aut portionis earund. apud —— vel ſuper ſolo cujuſvis partis praedict. terrarum, per traditionem terrae et lapidis ſolummodo, non obſtan. eaedem jaceant diſcontiguae, ac poſcerent plura infeofamenta et diverſa ſymbola, praeceptum ſaſinae poſtea inſertum, et nonnullas alias clauſulas; *ac etiam* dictus

actornatus antedict. *exhibuit* nobis diſpoſitionem de data —— die menſis —— milleſimo ſeptingenteſimo octogeſimo —— conceſſ. per dictum A. B. dicto C. D. per quam dictus A. B. *vendidit*, *alienavit*, et *diſpoſuit*, ad et in favorem dicti C. D. haeredibus

redibus et aſſignatis quibuſcunque, haereditarie et irredimabiliter, *totas* et *integras* praedict. terras, aliaque ſupra ſpecificat. jacen. et deſcript. ut praefertur; quae diſpoſitio ſpecialiter continet aſſignationem in et ad cartam reſignationis antea recitat. cum praecepto ſaſinae inibi content. poſtea inſert. ſed id ſolum in quantum intereſt terrarum aliorumque antea ſpecificat. *cum plena poteſtate* dict. C. D. obtinere ſeipſum infeodatum et ſaſitum virtute ejuſd. omni habili modo, *prout* dict. diſpoſitio, continens diverſas alias clauſulas, in ſe etiam latius proportat: *Quamque* cartam et diſpoſitionem dictus tanquam actornatus antedict. tradidit dicto vicecomiti in hac parte antedict. illum rogans et requirens ad executionem officii vicecomitis ſibi per idem commiſſi debite procedere; quodque officium dictus ſuſcepit, ac dict. cartam et diſpoſitionem manibus ſuis accepit, mihique notario publico per me, teſtibus et aſtantibus perlegendas, et in ſermone vulgari explicandas, et publicandas, *tradidit*: *Quod* feci; et cujus praecepti ſaſinae in dict. carta content. tenor ſequitur, et eſt talis,

Delivery to ſheriff in that part.

Acceptance by him,

and delivery to the notary. Publication.

talis, 'Inſuper,' &c. (inſere praeceptum); *poſt* cujus praecepti faſinae antea inſerti, cartae et diſpoſitionis et aſſignationis antea recitat. perlectionem, explicationem, et publicationem, praefatus

Inſertion of the precept.

tanquam vicecomes in hac parte antedict. virtute dict. praecepti ac officii vicecomitis ſibi per idem commiſſi, et diſpenſationis praedict. *dedit* et *tradidit* praefato C. D. tanquam jus habenti modo antea mentionat. *faſinam totarum* et *integrarum* praedict. terrarum aliorumque ſupra recitat. cum omnibus pertinen. earundem jacen. et deſcript. ut praefertur; *quamque* faſinam dictus vicecomes dedit per terrae et lapidis fundi dict. terrarum de

Delivery of ſeiſine.

praefato tanquam actornato, pro et in nomine dicti C. D. *traditionem* et *deliberationem*, ut moris eſt, ſecundum formam et tenorem dict. cartae et diſpenſationis inibi content. praecepti faſinae antea inſert. ac diſpoſitionis et aſſignationis antea recitat. in omnibus, nemine contradicente ſeu in contrarium opponente. *Super quibus* omnibus et ſingulis praemiſſis, praefatus tanquam actornatus antedict. inſtrumentum unum

Attorney's taking of inſtruments.

Place. unum vel plura a me notario publico ſibi fieri petiit, *acta* erant haec ſuper fundum dict. terrarum de virtute diſpenſationis praedict. modo mentionat.

Hour. in hoc publico inſtrumento, *horas* inter et meridiem, die menſis,

anno Domini noſtri, regis regnique, reſpective ſupra mentionat.

Witneſſes. *praeſentibus* ibidem et teſtibus ad praemiſſas ſpecialiter vocatis et requiſitis.

—upon a charter of reſignation and diſpoſition and aſſignation in liferent.

—— *upon a Charter of Reſignation and Diſpoſition and Aſſignation thereto in liferent.*

Invocation. *In Dei nomine, amen.*

Date. Per hoc praeſens publicum inſtrumentum cunctis pateat et ſit notum, quod, anno ab incarnatione Domini noſtri Ieſu Chriſti milleſimo ſeptingenteſimo octogeſimo —— regnique ſupremi Domini noſtri Georgii Tertii, Dei gratia, Magnae Britanniae, Franciae, et Hiberniae Regis, Fidei Defenſoris, anno vigeſimo —— menſis vero —— die ——

In

In mei notarii publici teſtiumque, ſubſcriben. praeſentia apud virtute diſpenſationis in carta poſtea ſpecificata content. *comparuit* Compearance.
tanquam actornatus, pro et in nomine C. D. in E. cujus actornati poteſtas mihi notario publico lucide conſtabat ; *necnon comparuit*
tanquam vicecomes vicecomitatus de —— ſpecialiter conſtitutus, in hac parte virtute praecepti ſaſinae poſtea inſerti content. in carta poſtea narrata. *Et ibidem* dictus Narrative.
actornatus antedict. *exhibuit* nobis quandam cartam reſignationis, praeceptum ſaſinae poſtea inſertum in ſe continentem, *conceſſam* per dict. S. D. N. regem, cum ſpeciali aviſamento et conſenſu dominorum baronum ſui ſcaccarii in Scotia, ac ſub ſuo magno ſigillo poſtea mentinat. *in favorem* A. B. de C. armigeri, *per quam* dictus S. D. N. cum aviſamento et conſenſu praedict. *dedit*, *conceſſit*, et *diſpoſuit*, ac pro ſeipſo, ſuiſque regis ſucceſſoribus, pro perpetuo *confirmavit*, dicto A. B. haeredibus ſuis et aſſignatis quibuſcunque, haereditarie et irredimabiliter, *totas* et *integras* (inſere terras), jacen. infra parochiam de

de —— et vicecomitatum de ——— et nonnullas alias terras inibi mentionat. modo latius ſpecificat. in dicta carta, quae continet diſpenſationem pro capiendo ſaſinam omnium et ſingularum terrarum inibi content. ſeu ullius partis aut portionis earund. apud vel ſuper ſolo cujuſvis partis praedict. terrarum, per traditionem terrae et lapidis ſolummodo, non obſtan. eaedem jaceant diſcontiguae, ac poſcerent plura infeofamenta, et diverſa ſymbola, praeceptum ſaſinae poſtea inſertum, et nonnullas alias clauſulas. *Ac etiam* dictus actornatus antedict. *exhibuit* nobis diſpoſitionem et aſſignationem de data —— die menſis ——— milleſimo ſeptingenteſimo octogeſimo —— conceſſ. per dictum A. B. dicto C. D. per quam dictus A. B. *vendidit*, *alienavit*, et *diſpoſuit*, ad et in favorem dicti C. D. in vitali reditu, duran. omnibus illius vitae diebus, et ſeipſi, haeredibus aut aſſignatis ſuis, in feodo, *totas* et *integras* praedict. terras aliaque ſupra ſpecificata, jacen. et deſcript. ut praefertur; quae diſpoſitio et aſſignatio ſpecialiter continet. aſſignationem, in et ad cartam reſignationis

nationis antea recitat. cum praecepto ſaſinae inibi content. poſtea inſert. ſed id ſolum in quantum intereſt terrarum aliorumque antea diſpoſita; *cum plena poteſtate* dicto C. D. obtinere ſeipſum infeodatum, et ſaſitum in terminis ſupra mentionatis in dictis terris aliiſque, cum pertinen. omni habili modo, prout dict. diſpoſitio et aſſignatio, continens diverſas alias clauſulas, in ſe etiam latius proportat. *Quamque* cartam, et diſpoſitionem, et aſſignationem, dictus tanquam actornatus antedict. tradidit dicto vicecomiti in hac parte antedict. illum rogans et requirens ad executionem officii vicecomitis ſibi per idem commiſſi debite procedere; *quodque* officium dictus ſuſcepit, ac dict. cartam, et diſpoſitionem, et aſſignationem, in manibus ſuis accepit, mihique notario publico, per me, teſtibus et aſtantibus, perlegendas, et in ſermone vulgari explicandas et publicandas, tradidit: Quod feci; et cujus praecepti ſaſinae in dict. carta content. tenor ſequitur, et eſt talis, 'Inſuper,' &c. (inſere praeceptum), *poſt* cujus praecepti ſaſinae antea inſerti, cartae, et diſpoſitionis,

Delivery to ſheriff in that part.

Acceptance by him.

Delivery to the notary.

Publication by him.

Inſertion of the precept.

sitionis, et assignationis antea recitat. per-
lectionem, explicationem, et publicationem,
Delivery of seisine. praefatus tanquam
vicecomes in hac parte antedict. virtute
dict. praecepti ac officii vicecomitis sibi per
idem commissi, et dispensationis praedict.
dedit et *tradidit* praefato C. D. in vitali
reditu duran. omnibus illius vitae diebus,
tanquam jus habenti in modo antea men-
tionat. *sasinam totarum* et *integrarum* prae-
dict. terrarum aliorumque supra recitat. cum
omnibus pertinen. earund. jacen. et de-
script. ut praefertur; *quamque* sasinam dic-
tus vicecomes dedit per terrae et lapidis
fundi dict. terrarum de
praefato tanquam actor-
nato, pro et in nomine dict. C. D. *traditi-
onem* et *deliberationem*, ut moris est, secun-
dum formam et tenorem dict. cartae et
dispensationis inibi content. praecepti sasi-
nae antea insert. ac dispositionis et assigna-
tionis antea recitat. in omnibus, nemine
contradicente, seu in contrarium opponente.
Attorney's taking of instruments. *Super quibus* omnibus et singulis praemis-
sis, praefatus tanquam
actornatus antedict. instrumentum unum
vel plura, a me notario publico sibi fieri
petiit

petiit, *acta* erant haec ſuper fundum dict. terrarum de virtute diſpenſationis praedict. modo mentionat. in hoc publico inſtrumento, *horas* inter et meridiem, die menſis, anno Domini noſtri regis, regnique, reſpective ſupra mentionat. *praeſentibus* ibidem et teſtibus, ad praemiſſas ſpecialiter vocatis et requiſitis.

Place.

Hour.

Witneſſes.

If the lands lie in a ſtewartry, forming a county, as Kirkcudbright, in place of the words *vicecomes* et *vicecomitatus*, the words *ſeneſcallus* and *ſeneſcallatus*, will be inſert in the charter, and muſt of courſe be uſed in the inſtrument of ſeiſine.

If the lands lie in a ſtewartry.

It may be thought, that, in place of the word *ſaſinam*, the following words ſhould be inſert: '*Statum haereditarium et ſaſinam*, pariterque poſſeſſionem actualem, 'realem, et corporalem.' But, as the terms of the precept muſt be the rule in all theſe caſes, and as the word *ſaſinam* is only to be found in the precept, any more would be ſuperfluous in the inſtrument.

Obſervation on the delivery of ſeiſine.

It was once doubtful if the diſpenſation for taking infeftment was effectual after the

—on the diſpenſation after

conveyance of the lands.

the lands were conveyed away from the perſon who had obtained the charter: But in a variety of caſes which have come before the Houſe of Peers, as the court of the laſt reſort, ſuch diſpenſations have been ſuſtained as effectual; and the matter no longer admits of a doubt.

Seiſine in favour of the firſt adjudger on crown charter.

Inſtrument of Seiſine in favour of the firſt adjudger upon a Crown Charter.

Invocation.

In Dei nomine, &c. *In mei* notarii publici et teſtium ſubſcriben. praeſentia perſonaliter

Compearance.

comparuit apud virtute diſpenſationis content. in carta poſtea mentionat. vicecomes in hac parte vicecomitatus de ſpecialiter conſtitutus, virtute praecepti ſaſinae ſubinſert. *Ibidemque etiam*, perſonaliter *acceſſit* tanquam actornatus, pro et in nomine C. D. in E. cujus actornati poteſtas mihi notario publico

Narrative.

ſubſcriben. lucide conſtabat; *habens* et in ſuis manibus *tenens*, quandam cartam adjudicationis

udicationis de data content. in dict. praeepto ſaſinae ſubinſert. per dict. S. D. N. cum aviſamento et conſenſu baronum caccarii in illa parte Magnae Britanniae cotia vocat. ſub ſigillo per Unionis tracatum cuſtodiend. et in Scotia utend. ordinat. vice et loco magni ſigilli ejuſd. *fact. dat.* et *conceſſ. in favorem* dict. C. D. per quam cartam dict. S. D. N. Rex, cum aviſamento et conſenſu Domini capitalis aronis aliorumque baronum ſui ſcaccarii n hac parte Magnae Britanniae Scotia vocat. *dedit*, *conceſſit*, et *diſpoſuit*, et pro ſeipſo ſuiſque regiis ſucceſſoribus pro perpetuo *confirmavit*, dict. C. D. haeredibus ſuis et ſſignatis, haereditarie (*a*), *totas* et *integras* inſere terras), *quaequidem* terrae aliaque raedict. perprius haereditarie pertinebant, enebantur, et reddunt modo in dicta carta mentionat. ſicuti eadem in ſe continen. raeceptum ſaſinae ſubinſert. et clauſulam iſpenſationis pro capiendo ſaſinam praedict. terrarum aliorumque ſupra ſcript. uper fundum ullius partis dict. terrarum, er traditionem terrae et lapidis ſolummodo, ſine neceſſitate ullius alius ſymboli, non bſtan. quod eadem diſcontigue jaceant, latius

Delivery to sheriff in that part.

latius habet. *Quamquidem cartam* dict. tanquam actornatus, pro et in nomine dict. C. D. *exhibuit* et *praesentavit* dict. vicecomiti praedict. eum requirens ut ad executionem officii sui qua vicecomes per dict. praeceptum sibi commissi procederet; *quod* desiderium dict. vicecomes sciens et percipiens justum esse dict. cartam, in manibus suis recepit, mihique notario publico perlegendam, publicandam, et in vulgari sermone testibus subscriben. tunc astantibus, explicandam, *tradidit*. *Quod* ita feci; et cujusquidem praecepti sasinae in dict. carta content. tenor sequitur: '*Insuper*,' &c. (ad finem cartae), *post cujusquidem* cartae praeceptique sasinae supra insert. inibi content. perlectionem, publicationem et testibus tunc astantibus vulgari sermone expositionem, praefatus vicecomes in hac parte praedict. virtute praecepti sasinae et clausula dispensationis content. in dicta carta et officii sui qua vicecomes sibi commissi *sasinam omnium* et *singularum* praefat. terrarum aliorumque supra mentionat. cum omnibus earund. pertinen.

Acceptance by him.

Delivery to the notary.

Publication by him.

Delivery of seisine.

tinen. jacen. ut praefertur, praefato C. D. per terrae et lapidis fundi dict. terrarum de in manibus praefati perſonaliter praeſentis, et dict. ſaſinam accipientis, tanquam actornati, et in nomine dict. C. D. uti moris eſt, traditionem et deliberationem, ſecundum formam et tenorem antedict. cartae diſpenſationis, praecepti ſaſinae ſupra inſert. *tradidit*, *deliberavit*, et juſte haberi *fecit*; *ſuper* quibus omnibus et ſingulis praemiſſis dict. tanquam actornatus, pro et in nomine dict. C. D. a me notario publico, hoc praeſens publicum inſtrumentum, ſeu plura publica inſtrumenta, quae eſſent neceſſaria illi fieri petiit, *acta* erant haec apud horas inter et diei menſis, anno Domini Regiſque regni reſpective ſupra mentionat. *quibus* ſupra praeſentibus ibidem et teſtibus ad cuncta praemiſſa rogatus et requiſitus.

Attorney's taking of inſtruments.

Place.

Hour.

Witneſſes.

Seiſine, upon a charter of ſale, will differ in nothing, except in calling it a charter of ſale, in place of a charter of adjudication.

—on a charter of ſale.

tion. 'Habens, &c. cartam alienationis,' &c. and at letter (*a*) adding the words '*et* '*irredimabiliter*.'—In case either of these are assigned, the assignation may be narrated, as in the examples of instruments of seisine upon charters of resignation and assignations thereto.

—on assignation of charter of adjudication of sale.

TITLE

TITLE III.

Wadſets.

A Wadſet is a right by which lands, or other heritable ſubjects, are impignorated by the proprietor to his creditor, in ſecurity of his debt. The debtor who grants the wadſet, and has the right of reverſion, is called the reverſer; and the creditor, receiver of the wadſet, is called the wadſetter. Wadſet.

Wadſets were originally granted in the form of a charter, (as moſt part of the writings, which in their nature admitted of it, were at that period), whereby —by charter.

the reverſer impignorated to his creditor the lands therein mentioned, to be enjoyed by him, until payment ſhould be made of the ſum lent. As creditors have their debtors commonly a good deal in their power, and are not always diſpoſed to make a good uſe of this power, a cuſtom afterwards prevailed of executing theſe rights, in the form of irredeemable diſpoſitions; and the right of reverſion was granted to the debtor in a ſeparate writing. By this means, wadſetters, who appeared from the face of their rights to be abſolute proprietors, had it in their power, by alienating the wadſet lands, to defeat the reverſion competent to the debtor, which being no more than a perſonal right, could only affect the wadſetter himſelf and his heirs, but not his ſingular ſucceſſors. To obviate theſe frauds, all reverſions were declared real rights, though granted in writings apart, by 1469, cap. 28. and, for the ſecurity of ſingular ſucceſſors, they were ordained to be recorded in the ſame regiſter with ſeiſines, by 1617, cap. 16. After theſe acts had paſſed, the practice of executing wadſets, by irredeemable diſpoſitions, and

Wadſet by diſpoſition and right of reverſion apart.

Rights of reverſion apart made real rights, & to be regiſtered.

letters

letters of reverſion apart, fell into diſuſe; and, by the preſent practice, they are commonly made out in the form of mutual contracts, in which one party ſells and wadſets the lands, and the other grants the right of reverſion, or by diſpoſition containing a clauſe of reverſion; which again approaches nearer to the original form by charter.

Wadſets (now uſed) by contract, or by diſpoſition, containing a clauſe of reverſion.

Wadſets are either proper or improper. A proper wadſet is, where the wadſetter takes the rent for his annualrents, though they ſhould fall ſhort of it; and if there be an overplus, is not accountable for it. An improper wadſet is where the wadſetter runs no riſk, but has his annualrent ſecure, any deficiency made up, and is accountable for the overplus. In proper wadſets, the wadſetter is generally obliged to pay the public burdens; in improper the reverſer.

—proper.

—improper.

As ſecurities upon land, for borrowed money, they are now ſeldom uſed: But as every perſon veſted in the abſolute right of lands, independent of the will of another, has right to be enrolled as a freeholder, if the lands bear a qualification, while his

—proper, uſed for freehold qualifications.

his right thus remains independent, though only for a time, if that time is fixed; on this account, proper wadſets have become a method of creating freehold qualifications, and are effectual to the wadſetters till the term of redemption, as, until that period, they have the full enjoyment of the lands as much as if they were abſolute proprietors. Improper wadſets do not give this privilege; for they do not entitle the wadſetter to the full rents, and the wadſet may be extinguiſhed before the term of redemption by intromiſſion, to the amount of the principal ſum and intereſt.

—improper not.

Proper wadſet by contract.

Contract of Wadſet.

Premiſſes. Parties. Conſideration. Diſpoſitive.

It is contracted and *agreed* between A. B. Eſq; of C. and C. D. in E. as follows; *that is to ſay*, the ſaid A. B. in conſideration of the ſum of ——— inſtantly advanced and paid to him by the ſaid C. D. whereof he grants the receipt, and diſcharges the ſaid C. D. *hath ſold* and *wadſetted*,

ſetted, and hereby *ſells*, *wadſets*, and *diſponeſ* to the ſaid C. D. his heirs and aſſignees heritably, but under reverſion, in manner after mentioned, *all* and *whole* (here take in the lands), together with all right, title, or intereſt, I have, or can pretend to the ſaid lands, during the not redemption: *In which* lands the ſaid A. B. *binds* and *obliges* him, his heirs and ſucceſſors, to infeft and ſeiſe the ſaid C. D. and his foreſaids, heritably, but under reverſion, in manner foreſaid, by a ſingle infeftment, to be holden from the ſaid A. B. of his immediate lawful ſuperiors of the ſaid lands, as freely, in all reſpects, as he holds, or might hold the ſame himſelf, and that by reſignation in manner under-written; *and*, for that effect, the ſaid A. B. *makes* and *conſtitutes*

Obligement to infeft.

Procuratory of reſignation.

and each of them, conjunctly and ſeverally, his lawful and irrevocable procurators, with full power for him, and in his name, *to reſign*, *ſurrender*, *ſimpliciter upgive*, *overgive*, and *deliver*, *all* and *whole* the ſaid lands, and others foreſaid, with the pertinents, lying, bounded, and deſcribed, in manner above mentioned, and here

here held as repeated *brevitatis cauſa*; in *the hands* of his immediate lawful ſuperiors of the ſame, *in favour* and for new infeftments of the ſame, to be made and granted to the ſaid C. D. and his foreſaids, heritably; *but redeemable* always, and under reverſion, the ſaid lands and others before diſponed, from the ſaid C. D. and his foreſaids, by the ſaid A. B. his heirs or aſſignees, at any term of Whitſunday, after the expiry of nineteen years, from and after the term of Whitſunday laſt, for payment or conſignation of the ſaid ſum of ——— within the pariſh church of —— betwixt the hours of one and four afternoon, upon premonition of forty days preceding ſuch term of Whitſunday after the ſuſpenſion above mentioned, to be made by the ſaid A. B. his heirs or aſſignees, or their procurators, in their names, to the ſaid C. D. or his foreſaids, perſonally, or at their dwelling-places, if within Scotland; and if furth thereof, upon the ground of the ſaid lands, and at the door of the pariſh-kirk of —— only; and, in caſe of abſence or refuſal, the redemption-money to be conſigned in the hands of the magi-

Clauſe of reverſion.

magistrates of ——— or any one of them most responsal for the time, or in the hands of any responsal man within the said parish of ——— to be made forthcoming at the peril of the consignet; and which clause of reversion above written shall be inserted in the infeftments to follow hereupon; and for making of the said redemption, and using the order hereby prescribed, a copy of the present contract of wadset, or of any seisine to follow hereupon, is declared to be a sufficient warrant: *Acts, instruments*, and *documents*, upon the premisses, to ask, take, and raise, and generally every other thing thereanent to do, that the said A. B. could have done himself, before granting hereof, or that to the office of procuratory in such cases is known to pertain; promising to hold firm and stable whatever his said procurators lawfully does, or causes to be done, in the premisses, without revocation:—*Which* lands, procuratory of resignation, and infeftments to follow hereon, during the not redemption, the said A. B. binds and obliges him, and his foresaids, to warrant to the said C. D. and his foresaids, at all hands,

Warrandice.

Assignation to the writs and rents.

hands, and againſt all deadly, as law will (*a*). *Moreover*, the ſaid A. B. makes and conſtitutes the ſaid C. D. and his foreſaids, his lawful ceſſioners and aſſignees, *not only* in and to all and ſundry charters, diſpoſitions, retours, precepts, and inſtruments of ſeiſine, procuratories and inſtruments of reſignation, and all other writings and ſecurities whatever, of and concerning the ſaid lands, and others foreſaid; *but alſo* in and to the mailles, farms, profits, and duties of the ſaid lands, that ſhall become due and payable during the not redemption in manner above written (*b*): Which aſſignation he binds and obliges him to warrant as to the writs and evidents, at all hands; and as to the rents, mailles, and duties, from his own proper fact and deed only (*c*).

Relief of public burdens.

And, in like manner, the ſaid A. B. binds and obliges him, and his foreſaids, to free and relieve the ſaid C. D. and his foreſaids, and to diſburden the ſaid lands and others foreſaid, of all ſupply, land-tax, ſtipend, ſchoolmaſter's ſalary, blench and teind duties, and other public burdens, due and payable furth of the ſaid lands, at and preceding the term of Whitſunday laſt (*d*); the ſaid C. D. and his foreſaids being

being always bound and obliged to free and relieve them of the said burdens (*e*) in all time coming thereafter, during the not redemption. *And further*, in case the said C. D. and his foresaids, shall incline to have payment of the said sum of —— (*f*), rather than retain the right of the said lands; *then*, and *in* that case, the said A. B. binds and obliges him, and his foresaids, to make payment to the said C. D. and his foresaids, secluding his executors, of the said sum of —— at the first term of Whitsunday, or at any other term of Whitsunday thereafter, with —— of penalty and liquidate expences, in case of failzie, and legal interest of the said principal sum, from and after the said term at which payment shall be required, during the not payment; but upon lawful requisition always of sixty days preceding such term, to be made by the said C. D. or his foresaids, to the said A. B. or his foresaids, personally, or at their dwelling-places, in presence of a notary and witnesses, as effeirs: *And, upon the other part*, and in consideration of the premisses, the said C. D. *not only* declares that the said lands are,

Clause of requisition.

Counterpart.

and shall be redeemable, from him and his foresaids, conform to the clause of reversion before written; and that these presents, or a copy thereof, or of any seisine to follow hereon, are and shall be sufficient for using such order of redemption; *but also binds* and *obliges* him the said C. D. and his foresaids, upon punctual payment, or consignation of the said sum of —— (*g*) as aforesaid, to grant and to deliver to the said A. B. and his foresaids, a sufficient right of redemption, and renunciation of the lands before disponed, and of this present wadset, and all infeftments which shall follow hereon, containing all clauses needful for extinction of the same, and revesting the said A. B. and his foresaids, in their own right of the foresaid lands and pertinents: *And both parties consent* to the registration, &c. (for execution). In witness, &c. (Subscription clause.)

If of the superiority.

If the property has been feued out, and the contract is intended only to constitute a wadset of the superiority, say at letter (*a*) 'Excepting from the said warrandice all 'rights of property of the said lands granted 'previous hereto:' And at letter (*b*), 'in so 'far

'far as I have right to the ſame, and par-
'ticularly in and to the feu-duties, ſervices,
'and caſualties of ſuperiority of the ſaid
'lands and others during the ſpace fore-
'ſaid.'

There is ſometimes, for more ſecurity, a clauſe added at letter (*c*), whereby it is declared, 'That the wadſetter takes his 'hazard of the rents, and bankruptcy of 'the tenants for the annualrent; and, on 'the other hand, if there ſhall be any ſur-'plus rent, that he ſhall not be accountable 'for it, and that no action of count and 'reckoning ſhall be competent on that 'head.'

If an improper wadſet, & of the property.

In an improper wadſet, the lands are 'redeemable, &c. for payment or conſig-'nation of the ſaid ſum of —— annual-'rents reſting at the time, and of ſuch ſums 'as they ſhall diſburſe in obtaining them-'ſelves infeft hereupon:' And, in place of the clauſe at letter (*c*), there will be a clauſe 'declaring, that, in regard the ſaid ——— '(the wadſetter), and his foreſaids, are not 'by this contract of wadſet to take their 'hazard of the rent of the lands, but in-'tend only to be ſecured in payment of 'the

'the annualrents of the wadset sum:—'*Therefore* the said —— (the reverser) 'binds and obliges him, his heirs and successors, that the yearly rents and duties 'of the lands and others, before disponed, 'shall be equivalent to the annualrents of 'the wadset sum, presently advanced by 'the said ——— and his above written; at least, if there shall be any deficiency therein, the said —— (the reverser) 'binds and obliges him and his, above 'written, to make up the same to the said '—— and his above written, yearly, as 'such deficiency may happen, so that the 'said —— and his foresaids, shall be constantly entitled to the annualrent of —— 'free of all deductions whatever; they 'being obliged to account for and impute, 'in part payment of the principal sum, 'whatever they shall uplift of the maills 'and duties, over and above the said sum 'of ——;' and leave out what is between (*d*) and (*e*), and, in place thereof, insert the word 'and;' and at (*f*) 'and annual-'rents thereof; and at letter (*g*), 'of prin-'cipal and annualrents due thereon, to 'grant,' &c. And if the wadset is of the property,

property, it may be by two manners of holding, and contain precept of ſeiſine. Sometimes the wadſetter, in improper wadſets, grants a back-tack of the lands for a ſum equivalent to the annualrent of his money; and that either *in gremio*, or by a ſeparate back-tack: But, as improper wadſets are now ſeldom uſed, the foregoing obſervations may ſuffice for illuſtrating the nature thereof.

Method of redemption.

In place of the tedious form of redemption formerly uſed, a proceſs of declarator of redemption may be brought at once, concluding, that on payment the lands ſhould be redeemed.

Proper wadſet by diſpoſition and aſſignation.

Diſpoſition and Aſſignation by way of proper Wadſet.

Granter or reverſer.

I, A. B. of C. heritable proprietor of the lands under-written, with the pertinents,

Conſideration.

for the ſum of —— inſtantly advanced and paid to me by C. D. in E. the receipt whereof I hereby acknowledge, renouncing all objections to the contrary; *having* a-

Receiver or wadſetter.

greed

greed to grant the disposition under reversion, or proper wadset, in manner underwritten, *do therefore*, by these presents, *sell*, *alienate*, *wadset*, and *dispone*, to the said C. D. his heirs and assignees whatsoever, heritably under reversion, in manner after-specified, *all* and *whole* (here take in the lands), with the whole parts, pendicles, and pertinents of the foresaid lands hereby disponed; *and* to the effect the said C. D. may be duly infeft and seised in the said respective lands herein before disponed, to be holden by him, and his foresaids, heritably, under reversion, in manner underwritten, of our Sovereign Lord the King's Majesty, my immediate lawful superior of the said lands, in the same manner that I hold, or may hold, the said lands myself, *I* hereby *assign* and *make over*, to and in favour of the said C. D. and his foresaids, a charter of resignation, bearing date the —— day of —— last, expede in my favours, under the Union seal of Scotland, and precept of seisine therein contained, hitherto unexecute, and that allenarly, in so far as concerns the lands herein before disponed. *And moreover*, I, by these presents,

Dispositive.

Assignation to the charter of resignation, and precept of seisine.

Assignation to the writs,

sents, *make* and *constitute* the said C. D. and his foresaids, my lawful cessioners and assignees, in and to the whole writs and evidents of the lands herein before disponed, and all right, title, and interest, thereby established in my person, upon and over the said lands and pertinents: *And likewise*, in and to the maills, farms, profits, and duties of the said lands, that shall become due and payable from and after the term of Whitsunday next, and in all time coming thereafter during the not redemption, in manner after specified, in so far as I have right to the same; and particularly in and to the feu-duties, services, and casualties of superiority of the said lands, during the space foresaid; *hereby obliging* myself, my heirs, and successors, to warrant these presents, and the lands, with the pertinents, before disponed, and the above assignation to the writs and evidents thereof, at all hands, and against all deadly, as law will; and the foresaid assignation to the maills and duties, feu-duties, and casualties of superiority, from my own proper fact and deed allenarly; excepting from this warrandice all rights of property

and rents, and feu-duties.

Warrandice.

property of the ſaid lands, granted by me the ſaid A. B. or my predeceſſors, or authors therein. *And in like manner*, I bind and oblige myſelf, and my foreſaids, to free and relieve the ſaid C. D. and his above written, and to diſburden the lands and others before diſponed, of all ſupply, land-tax, ſtipends, ſchoolmaſter's ſalary, feu, blench, and teind-duties, and other public burdens that are, or may become due, and payable furth of the ſaid lands, for, at, or preceding the term of Whitſunday next, the ſaid C. D. and his foreſaids, being alwiſe bound and obliged to free and relieve me of the ſaid burdens, in all time coming thereafter, during the not redemption (*a*).

Relief of public burdens.

And further, in caſe the ſaid C. D. or his foreſaids, ſhall deſire to have payment of the ſaid wadſet ſum, rather than retain this ſecurity, I bind and oblige myſelf, my heirs, and ſucceſſors, to make payment to the ſaid C. D. his heirs, ſucceſſors, or aſſignees, of the foreſaid ſum of ——, and that at any term of Martinmas or Whitſunday he ſhall demand the ſame, under the penalty of —— Sterling, in name of liquidate expences, in caſe of failzie; requiſition

Clauſe of requiſition.

quisition being always made, in the first place, to me, and my foresaids, by the said C. D. and his above written, six months preceding the term at which he or they shall incline to have payment of the said sum, and that in presence of a notary and witnesses as effeirs; *and* it is hereby declared that no manner of diligence, personal or real, following hereon, shall any ways hurt or invalidate this real security until actual payment is made of the foresaid sum. *Providing* and *declaring* that the lands and pertinents thereof before disponed shall be redeemable, and under reversion by me and my foresaids or our assignees, from the said C. D. and his above written, at the term of Whitsunday, one thousand seven hundred and ninety ——, or at any other term of Whitsunday or Martinmas thereafter, upon the premonition of forty days before to be made to him or them personally, or at their dwelling-places, in presence of a notary and witnesses, as effeirs, by payment making to him or them of the foresaid principal sum of —— Sterling, and of such expences as shall be given out and deburſed by him or them in doing diligence

Clause of reversion.

ligence for the ſaid ſum, or otherwiſe ſecuring themſelves thereanent; the place of redemption to be in St Giles's church in Edinburgh, in that part thereof where the Earl of Murray's tomb is ſituated; and, in caſe of their abſence or refuſal, by conſignation of the ſaid ſums, either in the hands of the provoſt, or any one of the bailies of Edinburgh for the time, to be made forthcoming at the peril of the conſigner; for uſing of which order of redemption, a copy of theſe preſents, or an extract hereof, if regiſtered, or of the infeftment to follow hereon, ſhall be equally valid as a formal letter of reverſion executed by the ſaid C. D.; *and* in regard the writs of the ſaid lands, generally and particularly before conveyed, do moſtly contain other lands of greater value than thoſe ſo diſponed under reverſion, and on that account fall properly to be retained in my hands, I therefore bind and oblige myſelf, and my foreſaids, to make the ſame forthcoming to the ſaid C. D. and his above written, at all times when they ſhall have neceſſary occaſion therefor, upon their receipt and obligement for redelivery thereof within

Obligation to make the writs forthcoming.

a

a competent time: *And I conſent* to the regiſtration hereof in the books of council and ſeſſion, or others competent, to have the ſtrength of a decreet interponed thereto, that letters of horning, on ſix days days charge, and all other execution neceſſary, may paſs hereon, in form as effeirs, and thereto conſtitute my procurators. *In witneſs*, &c.

Regiſtration.

In caſe the lands are valued *in cumulo* with other lands, ſay at letter (*a*), 'And it 'is hereby declared that the rule of aſcertaining ſaid relief, when theſe burdens 'are chargeable on the lands, hereby diſponed *in cumulo*, with the remainder or 'other parts of the ſaid lands of ——, 'ſhall be the real rents of the ſaid lands ſo 'charged *in cumulo*, as the ſame now pay, 'or may pay, conform to a judicial proof 'of the ſame, to be adduced on the joint 'application of the ſaid C. D. and me, be'fore the commiſſioners of ſupply for the 'county of ——.'

Variation, if the lands are valued *in cumulo* with other lands.

Obſer-

Obſervation.

Obſervation.

The facility with which liferent rights are both created and extinguiſhed, in compariſon of wadſets, will, it is believed, make liferent rights be more frequently uſed for freehold qualifications than wadſets. For, although wadſetters ceaſe to have right to vote, and may of conſequence be ſtruck off the roll as ſoon as a declarator of redemption, or a voluntary reſignation, or even a renunciation, is obtained by the reverſer; yet as, by the wadſetter's infeftment, he is conſtituted proprietor of the lands, and the reverſer diveſted of all right to them other than the power of redemption, it is doubtful if a ſimple renunciation by the wadſetter, though duly regiſtered, can ſo far reſtore the reverſer as to entitle him to be admitted to the roll of freeholders. According to ſtrict principles, a bare renunciation, without a reſignation, in the hands of the ſuperior, and a new charter, and infeftment following ſuch reſignation,

signation, cannot have the effect to restore the reverser to his former right: But, as these rules have been sometimes disregarded in cases of this kind, and as a wadset is only a temporary right in consideration for the use of the money, it may be thought that, after a renunciation, which is attended with little expence, the reverser should have the use of his property. A case of this kind occurred before the court of session, but was settled before it came the length of a decision *. Liferent rights, it has been observed, may be extinguished by simple renunciation, and even the same charter thereupon used for creating a new liferent.

Instruments of Seisine.

Instrument of seisine upon a charter of resignation, upon the example given of a contract —upon *charter of resignation on contract of wadset.*

* 1767. Case of Sir Geo. Lockhart.

contract of wadſet, will differ in little from an inſtrument of ſeiſine upon a charter of reſignation, proceeding upon a ſimple diſpoſition. It will be neceſſary to narrate the clauſe of reverſion, which may be done from the charter, from which any ſmall variation neceſſary will readily occur.

—on charter of reſignation and diſpoſition and aſſignation, by way of proper wadſet.

Inſtrument of ſeiſine upon a charter of reſignation and diſpoſition, and aſſignation thereto by way of proper wadſet, will firſt narrate the charter of reſignation, and then the diſpoſition and aſſignation; in narrating which laſt, it will ſay, '*vendidit*, '*alienavit*, *impignoravit*, et *diſpoſuit*, &c. 'haereditarie et ſub reverſione, modo inibi 'et ſubtus mentionat.' And, after narrating the diſpoſition and aſſignation, will add, 'proviſo omni modo quod terrae aliaque 'ſupra ſcript. ſint redimabilia per dict. A. 'B. ejuſque praedict. a dicto C. D. ejuſque 'praefatis, per ſolutionem aut conſignatio-'nem ſummae —— monetae ——, modo 'et ſecundum clauſulam reverſionis ſpeci-'ficat. et content. in dict. diſpoſitionem

'et

'et assignationem;' (or the clause of reversion may be narrated at length, and then go on) 'prout dict. dispositio et assignatio, continens diversas alias clausulas, 'in se etiam latius proportat.'

TITLE

TITLE IV.

Excambions.

Excambion implies tacit warrandice.

SOMETIMES the property of lands is conveyed by a deed instructing the exchange or excambion of one piece of ground with another, and which method of conveyance implies, in its very nature, a tacit warrandice of the piece conveyed; for, if the lands exchanged are carried off from either of the parties, the law itself, without any paction, gives that party immediate recourse upon his own first lands, which have been given in exchange for the lands evicted, even though a third person had acquired a real right in them prior

prior to the eviction: But this holds only where the deed or grant, by which the lands are exchanged, is expreſsly ſaid to be an excambion.

An exchange of ſmall parcels of land, for the purpoſe of ſtreighting marches, does not afford any ground for ſtriking a freeholder off the roll, even although his *valuation* be no greater than the law requires. It is to be preſumed that he gets as much as he gives. In a caſe from the county of Forfar, no leſs than forty acres had been given off; but as another piece of land was received in exchange, it was underſtood that the tranſaction made no variation upon the extent of the *valued rent* *. When ſmall lots of lands are exchanged for the purpoſe of ſtreighting marches, it is not uſual for any formal conveyances from the one proprietor to the other to take place; but, if conſiderable tracts of ground are exchanged, and mutual diſpoſitions are granted, there is an alteration of their reſpective eſtates; and it ſhould ſeem that a tranſ-

—for ſtreighting marches, ground for ſtriking a freeholder off the roll.

A a action

* 1768. Skene of Skene *contra* Graham of Flemington.

action of that nature might afford an objection. Where a freehold qualification depended upon the *old extent*, it has likewise been found that a ſmall and trifling diſmemberment, for the purpoſe of ſtreighting marches, afforded no good objection; and that the prohibition in the act 16th Geo. II. did not here apply. It was thus decided in the court of ſeſſion *, and in the committee of the houſe of commons, on the election in 1780, for the county of Ayr.

Contract of Excambion.

Contract of Excambion.

Premiſſes. Parties. Conſideration. Diſpoſitive.

It is contracted, agreed, and finally *ended*, betwixt A. B. of C. and C. D. of E. *on the one* and *other parts*, in manner underwritten; *that is to ſay*, the ſaid parties, judging it will be for their mutual intereſt to make the exchange after-mentioned, *have* agreed to enter into the contract of excam-

* February 1781. Hamilton of Sundrum *contra* Bogle of Shettleſtone.

excambion in manner, and to the effect following; *therefore* the ſaid A. B. on his part, has *ſold*, *alienated*, and *diſponed*, and hereby *ſells*, *alienates*, and *diſpones*, to and in favour of the ſaid C. D. his heirs, or aſſignees whatſoever, heritably and irredeemably, *all* and *whole* (inſert the lands), together with all right, title, intereſt, he, his predeceſſors, or authors, had, have, or any ways might have, could claim, or pretend thereto; *and that* in excambion, exchange, and permutation of the lands and others after diſponed, to the ſaid A. B. in manner following, and with and under the proviſions and declarations after inſert: *And, on the other part*, the ſaid C. D. (*a*) *hath ſold* and *diſponed*, and hereby *ſells*, *alienates*, and *diſpones*, to and in favour of the ſaid A. B. his heirs or aſſignees whatſoever, heritably and irredeemably, *all* and *whole* (deſcribe the lands), together with all right, title, intereſt, claim of right, property, or poſſeſſion, the ſaid C. D. his predeceſſors, or authors, had, or could pretend thereto; *and that* in excambion, exchange, and permutation, of the lands and others, diſponed by the ſaid A. B. in manner after

ter ſpecified, and alſo with and under the
Obligement to infeft. proviſions and declarations after inſert: *In* which lands and others foreſaid, with the pertinents, both the ſaid parties bind and oblige themſelves, and their foreſaids, on their mutual expences, duly, validly, and ſufficiently, to infeft and ſeiſe one another,
Tenendas. and their foreſaids; and that by two ſeveral infeftments, and manners of holding, the one thereof to be holden of the diſponer, his heirs, and ſucceſſors, in free blench for payment of a penny Scots money yearly, upon the ground of the ſaid lands, at the term of Whitſunday, if aſked allenarly, and freeing and relieving them of the duties and ſervices payable to their ſuperiors thereof; and the other of the ſaid infeftments to be holden of the ſaid A. B. and C. D. their reſpective ſuperiors of the ſaid lands, in the ſame manner, and as freely as they held, or might hold, the ſame themſelves; and that either by reſignation or confirmation, or both, the one without
Procuratory of reſignation. prejudice of the other: *And for* effectuating the ſaid infeftment by reſignation, the ſaid parties hereby *make* and *conſtitute*

and each of them, jointly and ſeverally,

rally, their lawful and irrevocable procurators, to *reſign*, as they hereby reſign, ſurrender, upgive, overgive, and deliver the lands and others above diſponed, as follows, viz. the ſaid A. B. in the firſt place, *reſigns*, *upgives*, and *overgives*, all and whole (repeat A. B.'s lands ſhortly) *in the hands* of his immediate lawful ſuperiors thereof, or of their commiſſioners, having power to receive reſignations, and grant new infeftments thereof, *in favour*, and for new infeftments thereof to be made, given, and granted, to the ſaid C. D.; as the ſaid C. D. in the ſecond place, *reſigns*, *upgives*, and *overgives*, *all* and *whole* (repeat C. D.'s lands ſhortly) *in* the hands of his immediate lawful ſuperiors thereof, or of their commiſſioners, in their names, having power to receive reſignations, and grant new infeftments thereupon. In favour, and for new infeftments thereof to be made, given, and granted, to the ſaid A. B. heritably and irredeemably, in due and competent form, as effeirs: Acts, inſtruments, and documents, upon the premiſes, to aſk, take, and raiſe, and generally every other thing which to the office of procurator, in

ſuch

ſuch caſes, is known to pertain: All which the ſaid parties ſeverally promiſe to hold firm and ſtable without revocation. *Moreover*, the ſaid A. B. and C. D. bind and oblige themſelves, their heirs and ſucceſſors, to warrant this preſent contract, and lands and others thereby exchanged, at all hands and againſt all deadly, as law will. *And alſo* to free, relieve, and diſburden the ſame of all feu, blench, and teind duties, ceſs, miniſters ſtipends, ſchoolmaſter's ſalary, and other public burdens, due and payable furth of the ſaid lands, preceding the term of ——, the party receiver being obliged to relieve the party diſponer thereof in all time coming thereafter. *And further*, the ſaid parties hereby *make* and *conſtitute* each of them the other, and his foreſaids, his lawful ceſſioners and aſſignees, *not only* in and to all and ſundry charters, diſpoſitions, procuratories and inſtruments of reſignation, retours, precepts, and inſtruments of ſeiſine, granted to the cedent, his authors and predeceſſors, in reſpect of the lands above diſponed by him, and all that has followed or may follow thereon: *But alſo* in and to the rents, mails, and duties of the lands

Warrandice.

Relief of public burdens.

Aſſignation to the writs and rents.

lands ſo exchanged, from and after the term of ——, hereby declared to be the term of entry to the ſaid reſpective lands, and in and to the ſtanding tacks of the ſaid lands, and whole clauſes therein contained: Which aſſignation the ſaid parties bind and oblige themſelves to warrant to each other as follows, viz. As to the writs at all hands, and as to the rents, mails, and duties, from their own proper facts and deeds allenarly; excepting from the ſaid warrandice the ſtanding tacks of the ſaid lands, without prejudice to the parties to whom the ſame are aſſigned, to quarrel or impugn them on any ground competent in law, not inferring warrandice or recourſe againſt the other party. *But* it is hereby *provided* and *declared* as an expreſs quality and condition of this preſent excambion, and it is ſpecially to be engroſſed in the charters and infeftments to follow hereupon, that in caſe, through any defect of title in either party to the reſpective lands hereby excambed, or by any fact, deed, debt, or incumbrance, created by either of the parties, or their predeceſſors or authors, it ſhall happen any of the land ſo excambed Proviſions.

bed to be evicted from either of them, that then, and in that caſe, the perſon whoſe lands and others, or any part thereof, ſhall be ſo evicted, ſhall have free regreſs, ingreſs, and acceſs in and to the lands diſponed by him in excambion, as above (*b*); at leaſt to ſo much thereof as at the time of ſuch eviction ſhall be equal in rent and value to the lands evicted (*c*): And that *brevi manu*, at their own hand, without incurring the hazard of ejection, purpriſion, or intruſion, and without the neceſſity of any proceſs of declarator or removing, or any other action for that purpoſe (*d*): Under which expreſs quality and condition this preſent contract is entered into, and no otherwiſe. *And providing alſo* and *declaring*, that, in caſe any action ſhall be raiſed and executed at the inſtance of any perſon or perſons, for evicting, or tending to the eviction of the lands and others foreſaid hereby excambed, that the perſon whoſe right, by ſuch proceſs, ſhall be brought in queſtion, ſhall be bound and obliged to make due and lawful intimation thereof to the other party diſponer of the lands called in queſtion, or his heirs and ſucceſſors, at leaſt

leaſt before extracting an act of litiſcon-teſtation in the cauſe; and that perſonally, or at their dwelling places, for the time, if within Scotland, and, if furth thereof, by open proclamation at the market croſs of Edinburgh, pier and ſhore of Leith; and to their tutors and curators, if they be mi-nors, for the time, at the market croſs of the ſhire or ſtewarty where their lands eſtate lie, in preſence of a notary and wit-neſſes, and affix and leave copies of the ſaid intimation at the ſaid places, that they may be the more certiorate of ſuch diſtreſs. *And* in regard the writings of each of the ſaid lands generally contain other ſubjects of greater value, they bind and oblige themſelves reſpectively to make the writs of the different ſubjects given in excambion forthcoming to one another, when they have occaſion therefor, upon receipt and obligement for redelivery within a limit-ed time. *And they conſent* to the regiſtra-tion hereof in the books of council and ſeſſion, or others competent, therein to re-main for preſervation; and, if needful, that letters of horning on ſix days charge, and all other execution neceſſary, in form as ef-

Obliga-tion to make the writs forthcom-ing.

Regiſtra-tion.

feirs, paſs hereon, and thereto they conſtitute

Precept of ſeiſine.

their procurators: *Attour*, for the better obtaining infeftment by confirmation, both parties contractors do hereby command

and each of them, conjunctly and ſeverally, ſpecially conſtitute, that, on ſight hereof, they paſs to the ground of the ſaid lands and others foreſaid, hereby mutually exchanged, *and there* give and deliver heritable ſtate and ſeiſine, actual, real, and corporal poſſeſſion, to the ſaid C. D. of *all* and *whole* (repeat A. B.'s lands) lying as ſaid is; *and alſo* give and deliver heritable ſtate and ſeiſine, actual, real, and corporal poſſeſſion, to the ſaid A. B. of *all* and *whole* (inſert C. D.'s lands) lying as ſaid is; by delivery to them reſpectively, or to their certain attorneys in their names, bearers hereof, of earth and ſtone of and upon the grounds of the ſaid lands, and all other ſymbols requiſite and neceſſary, to be holden in manner above mentioned; after the form and tenor of this preſent contract in all points, and this in nowiſe they leave undone: The which to do both parties here-

by

by commit to their ſaid bailies, in that part foreſaid, conjunctly and ſeverally, as ſaid is, their full power by this their precept, directed to them for that effect. *In witneſs, &c.*

Subſcription clauſe.

If there is a difference in the value of the lands, ſay at letter (*a*) 'in conſideration thereof, and of the ſum of ——, being the difference in value of their reſpective lands, inſtantly advanced and paid to him by the ſaid A. B. whereof he grants the receipt, renouncing all objections to the contrary.' And at (*d*) 'and in caſe the ſaid lands hereby diſponed to the ſaid C. D. ſhould be totally evicted, not only the ſaid A. B. and his heirs, but alſo their ſingular ſucceſſors, in the lands above excambed, ſhall further be bound and obliged, and bind and oblige themſelves, to repeat to the ſaid C. D. the foreſaid ſum of ——, being the difference in value of the ſaid lands.'

Variation, if a difference in value.

In caſe, upon a partial eviction, the party from whom the lands have been in part evicted, wiſhes rather to have his whole firſt lands, in place of the others, than

—in caſe a partial eviction gives total recourſe.

than only to the value of the eviction, leave out what is between (*b*) and (*c*).

Obſervation. It is believed theſe deeds very ſeldom occur in practice, as they are not neceſſary in ſmall parcels for ſtreighting marches, or in lands lying runrig, which may be divided by decreet of a judge, or by decreet-arbitral; and whole eſtates, or even ſingle farms, are rarely exchanged. As ſuch exchange, however, may take place, I have thought fit to give an example.

—on contract of excambion. *Inſtrument of Seiſine upon a Contract of Excambion.*

Inſtrument of ſeiſine, in favour of one of the parties, upon a contract of excambion, will proceed on the following narrative:

Narrative. *Having*, and in his hands *holding*, contract of excambion, of the date, and containing the precept of ſeiſine after inſert, entered into between A. B. of C. and the ſaid C. D. on the one and other part

in manner therein mentioned; whereby the ſaid A. B. &c. (and ſo narrate it to the obligement to infeft, and ſay), *but it is thereby provided* and *declared*, &c. (take in the proviſions and declarations, and ſay), as the ſaid contract of excambion, containing a mutual obligation to infeft by two ſeveral infeftments, and manners of holding, procuratory of reſignation, clauſe of abſolute warrandice, aſſignation to the writs and rents, the precept of ſeiſine after inſert, and ſeveral other clauſes, more fully bears, &c.

TITLE

TITLE V.

Rights in Security; of Relief; and Conveyances thereof.

Rights of annualrent.

When introduced, and used.

IN treating hereof, it may be obſerved, that *rights of annualrent*, as formerly conceived, could only burden the lands with the annualrent, but not with the principal ſum. Theſe ſecurities were introduced before it had become lawful to take intereſt for money, and were uſed during the ſubſiſtence of wardholding, on account of the caſualty of *recognition*; but have now given place to *bonds and diſpoſitions under reverſion*; or, to what in the law-books are termed

termed *infeftments in ſecurity*, by which the creditor is infeft, *not only* in an annualrent forth of the lands, *but alſo* in the lands themſelves, in ſecurity of the principal ſum, intereſt, and penalty; whereby the lands are burdened with the principal ſum, as well as the annualrent. The term *heritable bond* is common both to this laſt-mentioned ſecurity, and to a right of annualrent; and may alſo be applied to a bond ſecluding executors.—The following ſecurity, therefore, though commonly termed an heritable bond, is properly *a right in ſecurity*.

Rights in ſecurity.

Heritable bond, what?

Heritable Bond.

Heritable bond.

I, A. B. of C. grant me, by theſe preſents, to be juſtly addebted, reſting, and owing, to C. D. in ——, the ſum of —— Sterling; which ſum of —— I bind and oblige me, my heirs, executors, and ſucceſſors whatſoever, to repay, and again deliver, to the ſaid C. D. his heirs or aſſignees; and

Perſonal obligation.

and that at and againſt the term of Martinmas next to come, with —— like money of liquidate penalty, in caſe of failzie, and the legal intereſt of the ſaid principal ſum, from the date hereof to the ſaid term of payment, and yearly, termly, and proportionally thereafter, during the not payment thereof: *And* for the ſaid C. D. and his foreſaids, their further ſecurity, and more ſure payment of the foreſaid ſums, and without prejudice to the perſonal obligation above written, I bind and oblige me, and my foreſaids, upon my own proper charges and expences, duly and lawfully to infeft and ſeiſe the ſaid C. D. and his foreſaids, heritably, but under reverſion, in manner after mentioned; *not only* in *all* and *whole* an annualrent of —— or ſuch an annualrent, leſs or more, as ſhall, by law for the time, effeir and correſpond to the ſaid principal ſum of —— Sterling, to be uplifted and taken at two terms in the year, Whitſunday and Martinmas, by equal portions, beginning the firſt term's payment thereof at the ſaid term of Martinmas next to come, for what part thereof ſhall then be due, and the next term's

Obligement to infeft.

term's payment at the term of Whitſunday following; and ſo forth, yearly and termly thereafter, during the not redemption, with —— Sterling for each term's failure in payment of the ſaid annualrent; *furth* of *all* and *whole* (take in the lands), lying within the pariſh of ——— and ſhire of ——, or furth of any part or portion thereof, readieſt maills, farms, profits, and duties of the ſame; *but alſo*, in *all* and *whole* the ſaid lands, and others, before mentioned, themſelves, for, and in real ſecurity to the ſaid C. D. and his foreſaids, of the ſaid principal ſum, intereſt that may be due thereon, penalty, if incurred, and expences of infeftment to follow thereon, (if laid out by them); to be holden either of me, my heirs, and ſucceſſors, in free blench, for payment of a penny Scots money, on the ground of the ſaid lands, in name of blench farm, at the term of Candlemas yearly, if aſked, allenarly, for both annualrent and lands; or from me, of my immediate lawful ſuperiors, in the ſame manner, and as freely, in all reſpects, as I held, hold, or may hold the ſame myſelf, but under reverſion, in manner un- Tenendas.

der-written; and that either by reſignation, or confirmation, or both, the one without prejudice of the other: *And for* effectuating the ſaid infeftment by reſignation, I hereby *make* and *conſtitute* and each of them, my procurators, to *reſign*, as I by theſe preſents, *reſign* and *ſurrender*, *not only all* and *whole* the foreſaid annualrent of —— or ſuch an annualrent, leſs or more, as ſhall by law for the time effeir, and correſpond to the ſaid principal ſum of —— yearly, to be uplifted and taken, at two terms in the year, Whitſunday and Martinmas, by equal portions, beginning the firſt term's payment of the ſaid annualrent, for the intereſt then due, at the term of Martinmas, as ſaid is, and ſo forth during the not redemption, with ——— for each term's failure in payment of the ſaid annualrent; *furth* of *all* and *whole* (repeat the lands), *or* furth of any part or portion thereof, readieſt, maills, farms, profits, and duties of the ſame; *but alſo*, *all* and *whole* the ſaid lands and others, before mentioned, themſelves, for, and in real ſecurity to the ſaid C. D. and his foreſaids, of the ſaid principal

principal ſum, intereſt thereof, penalty, and expences of infeftment to follow hereon, *in the hands* of my immediate lawful ſuperiors of the ſaid lands and others foreſaid, or of their commiſſioners, having power to receive reſignations, and grant new infeftments; *in favour*, and for new infeftment of the ſame, to be made and granted to the ſaid C. D. and his foreſaids, heritably, but under reverſion, in manner mentioned in the clauſe of reverſion, engroſſed in the precept of ſeiſine under-written, in ſuch due and competent form as effeirs; acts, inſtruments, and documents upon the premiſſes to aſk, take, and raiſe, and generally every other thing to do that I might do myſelf, if perſonally preſent, or which to the office of procuratory in ſuch caſes is known to pertain; all which I promiſe to hold firm and ſtable, without revocation: *Which* annualrent, lands, and others foreſaid, out of which the ſame is upliftable, I bind and oblige me, and my foreſaids, to warrant at all hands, and againſt all deadly, as law will, during the not redemption hereof. *As alſo* for the ſaid C. D. and his foreſaids, their further ſecurity,

Warrandice.

Aſſignation to the rents.

ſecurity, I hereby *make* and *conſtitute* them my ceſſioners and aſſignees, *in* and *to* as much of the beſt and readieſt of the rents, maills, duties, cuſtoms, and caſualties, of the lands above written, as will not only ſatisfy and pay them the yearly annual-rent foreſaid, and termly failures, if incurred, but alſo the foreſaid principal ſum, intereſt, and penalty, if incurred, and expences of infeftment to follow hereon; with full power to him, and his foreſaids, to intromit with the ſaid rents, call, and purſue therefor, receipts and diſcharges to grant, which ſhall be ſufficient to the receivers; and generally every other thing thereanent to do, which I might have done myſelf, before granting hereof; *and* I *oblige* me to warrant this aſſignation from my own proper facts and deeds: *Providing* always, as it is hereby expreſsly *provided* and *declared*, that, in caſe the ſaid C. D. and his foreſaids ſhall think fit, at any time hereafter, during the not redemption, to enter to the poſſeſſion of the ſaid lands and pertinents, or to the uplifting the rents, or any part of the ſame, yet he, and his foreſaids, ſhall not be obliged to

Proviſion.

continue

continue the poſſeſſion; but it ſhall be lawful to them, when they think fit, to deſiſt therefrom, and again reaſſume the ſame at pleaſure; they being hereby declared to be no further liable than for their own actual intromiſſions, and not for diligence in any ſort: *And, in caſe* the ſaid C. D. and his foreſaids, ſhall chuſe to hold the annualrent, lands, and others foreſaid, of me, and my foreſaids, *then* I *oblige* me and them to enter the ſaid C. D. and his foreſaids, either as heirs, or ſingular ſucceſſors, vaſſals therein ſucceſſively, during the not redemption, *gratis*; *and* when any caſualties ſhall fall in our hands, as ſuperiors, to aſſign the ſame to them; *likeas* now, as if the ſaid caſualties had already fallen, I hereby *aſſign* and *diſpone* the ſame in their favours, for ever, to be diſpoſed of by them at pleaſure; *and* it is hereby expreſsly *provided* and *declared*, that it ſhall be lawful to the ſaid C. D. and his foreſaids, to uſe all manner of diligence, perſonal or real, upon the perſonal obligation above written, at the foreſaid term of payment, or at any time thereafter, againſt me, and my foreſaids, without requiſition; and

Obligation to enter vaſſals *gratis*.

And aſſign caſualties.

Proviſion.

and that the ſame ſhall nowiſe hurt or invalidate theſe preſents, and that the ſaid infeftment of property ſhall nowiſe extinguiſh the ſaid infeftment of annualrent; but that it ſhall be lawful to the ſaid C. D. and his foreſaids, to make uſe of all or either of theſe rights, the one without prejudice of the other, without innovation or confuſion: *And I conſent* to the regiſtration hereof in the books of council and ſeſſion, or others competent, to have the ſtrength of a decreet interponed thereto, that letters of horning, on ſix days charge, and all other execution neceſſary paſs hereon, in form as effeirs; and thereto conſtitute my procurators: *Attour* to the effect the ſaid C. D. and his foreſaids, may be infeft and ſeiſed in the ſaid annualrent, and lands and others foreſaid, themſelves, and in ſecurity as ſaid is, to be holden in manner foreſaid; I hereby deſire and require you, and each of you conjunctly and ſeverally, my bailies in that part, ſpecially conſtitute, to the effect under-written, that, on ſight hereof, ye paſs to the ground of the lands above ſpecified, *reſpective*

Regiſtration.

Precept of ſeiſine.

reſpective and *ſucceſſive* after others, and there give, and deliver heritable ſtate and ſeiſine, actual, real, and corporal poſſeſſion, *not only* of *all* and *whole* the foreſaid annualrent of —— or ſuch an annualrent, leſs or more, as ſhall by law for the time effeir and correſpond to the foreſaid principal ſum of —— yearly, to be uplifted and taken, at two terms in the year, Whitſunday and Martinmas, by equal portions, beginning the firſt term's payment of the ſaid annualrent at the ſaid term of Martinmas next, for what part thereof ſhall then be due, and the next term's payment at the term of Whitſunday following, and ſo forth, yearly and termly thereafter, during the not redemption; with —— for each term's failure in payment of the ſaid annualrent, *furth* of *all* and *whole* (repeat the lands), or furth of any part or portion thereof, readieſt rents, maills, farms, profits, and duties of the ſame; *but alſo* of *all* and *whole* the ſaid lands and others before mentioned, themſelves, for, and in real ſecurity to the ſaid C. D. and his foreſaids, of the ſaid principal ſum, intereſt that may be due thereon, liquidate penalty, if incurred,

red, and of the expences of infeftment to follow hereupon, to the ſaid C. D. and his foreſaids, by deliverance to them, or their certain attorney, or attornies, in their names, bearers hereof, of earth and ſtone of the ground of the ſaid lands, *reſpective* and *ſucceſſive*, after others, and a penny money for the ſaid annualrent, and other ſymbols uſual and requiſite; *but redeemable* always, and under reverſion, in manner after mentioned, viz. *declaring* always, as it is hereby expreſsly *provided* and *declared*, that the ſaid annualrent, and lands and others above written, out of which the ſame is upliftable, are and ſhall be redeemable by me, and my foreſaids, from the ſaid C. D. and his foreſaids, by payment making to them at the ſaid term of Martinmas next, or at any other term of Martinmas or Whitſunday thereafter, upon premonition of ſixty days, previouſly to be made by me, or my foreſaids, to the ſaid C. D. or his above written, perſonally, or at their dwelling-places, in preſence of a notary and witneſſes, as effeirs, of the ſaid ſum of ——— of principal, and bygone annualrents thereof, that ſhall be reſting

Clauſe of reverſion.

for

for the time, and the expence of infeftment to follow hereon, and ſuch other expences as ſhall be deburſed in doing diligence on theſe preſents, conform to an account thereof to be given in by the ſaid C. D. and his foreſaids, and ſubſcribed by them upon their words, with the annualrent of ſaid expences, from the periods of deburſing the ſame; and that within the new ſeſſion-houſe of Edinburgh, in the place thereof where the ſheriff uſually ſits in judgment; or, in caſe of abſence or refuſal, by conſignation of theſe ſums in the hands of the provoſt, or any one of the bailies, dean of guild, or treaſurer of the ſaid city of Edinburgh, moſt reſponſal for the time, to be made forthcoming to the ſaid C. D. and his foreſaids, upon the peril and hazard of the conſigner; *declaring* that an extract hereof, or of the ſeiſine to follow hereon, ſhall be ſufficient for uſing the ſaid order of redemption; with and under which proviſions, theſe preſents are granted and accepted: The which to do, I commit to you, and each of you, conjunctly and ſeverally, my full power, by this

my preſent, directed to you for that effect. *In witneſs*, &c.

Subſcription clauſe.

Heritable bond of corroboration, differs in nothing except in the perſonal obligation, which is the ſame as in a moveable bond of corroboration; and in mentioning the principal ſum, it is called, 'principal accumulated ſum.'

Heritable bond of corroboration.

Heritable bonds are frequently granted to be held baſe, and then the procuratory of reſignation is left out. If there are former ſecurities, or other incumbrances upon the ſubject, the warrandice may be reſtricted to the extent of the ſums in the heritable bond; both which will be further illuſtrated by the following example.

—if held baſe, or if former ſecurities.

Heritable Bond of Relief.

Heritable bond of relief.

Be it known to all men, by theſe preſents, me, A. B. of C. *whereas* C. D. Eſq; of E.; F. G. Eſq; of H.; and I, by our bond dated ——, bound and obliged us, conjunctly and ſeverally, our heirs, executors,

Premiſſes.

Granter.

Narrative.

tors, and ſucceſſors whatſoever, to pay to W. V. in ——— (here narrate the bond); *and whereas*, notwithſtanding of the above bond, I hereby declare, that the above ſum of ——— was received by me, and wholly applied to my proper uſe and behoof, and no part thereof to the uſe and behoof of the ſaid C. D. or F. G.; *therefore*, I hereby *bind* and *oblige* myſelf, my heirs, executors, and ſucceſſors, to free, relieve, harmleſs and ſkaithleſs keep, the ſaids C. D. and F. G. their heirs, executors, and ſucceſſors, of and from payment of the foreſaid principal ſum of ——, annualrent thereof, and liquidate penalty above ſpecified, contained in the bond above narrated, and of the ſaid bond itſelf, and of all coſt, ſkaith, damage, intereſt, and expences, which the ſaid C. D. or his foreſaids, may happen to ſuſtain or incur therethrough, in any manner of way: *And*, for that effect, to procure and deliver to them the foreſaid bond unregiſtered, at the term of Whitſunday next to come, to the end that they may tear their names therefrom; and, in caſe of regiſtration thereof, to procure and deliver to the ſaid C. D. and F. G. an extract

Subſumption.

Perſonal obligation.

tract of a valid diſcharge thereof, at the ſaid term of payment; *or otherwiſe*, to make payment to the ſaid C. D. and F. G. at the ſaid term, of the foreſaid ſum of ——, annualrents that may be due thereon, and liquidate penalty before ſpecified, to the end that they may pay in the ſame to the ſaid W. V. and thereby operate their own relief of the ſaid bond, with —— of penalty in caſe of failure. *And* for their further ſecurity, anent their relief of the ſaid bond, and more ſure payment of the foreſaid principal ſum, annualrents that may fall due thereon, and penalty, if incurred, I *bind* and *oblige* me, and my foreſaids, upon my own proper charges and expences, duly and validly to infeft and ſeiſe the ſaid C. and F. G. and their foreſaids, in *all* and *whole* (here take in the ſubject); and that in real warrandice, ſecurity, and relief, to the ſaid C. D. and F. G. and their foreſaids, of the ſums of money, principal, annualrents, and penalty above mentioned, and expences of infeftment to follow hereon; ſo that, if it ſhall happen the ſaids C. D. and F. G. or their foreſaids, to be diſtreſſed for the ſame, or any part thereof, then,

Obligement to infeft.

then, and immediately thereafter, they ſhall have full and free ingreſs and acceſs to the lands and others above mentioned, and maills and duties of the ſame; at leaſt to ſo much thereof as ſhall be correſpondent to the ſaid diſtreſs, and to the damages and expences to be ſuſtained therethrough, *to* be held of and under me, in free blench, for payment of a penny Scots, at the term of Lammas yearly, upon the ground of the ſaid lands, if aſked, allenarly: *And I bind* and *oblige* me, my heirs and ſucceſſors, to warrant the foreſaid lands, with the pertinents, and infeftment to follow hereon, at all hands, and againſt all deadly, as law will, to the extent of the whole ſums that ſhall be due in conſequence hereof. *And* I *bind* and *oblige* me, and my foreſaids, to receive the ſaid C. D. and F. G. their heirs and ſingular ſucceſſors, vaſſals to me, therein *gratis*, without any compoſition. *And moreover*, I by theſe preſents, *make*, *conſtitute*, and *ordain*, the ſaid C. D. and F. G. and their foreſaids, my lawful ceſſioners and aſſignees, *in* and *to* as much of the firſt and readieſt of the rents, maills, farms, profits, and duties of the ſaid lands and others

Tenendas.

Warrandice.

Obligation to enter vaſſals *gratis*.

Aſſignation to the rents.

thers foresaid, due and payable furth thereof, as will free and relieve them of the said bond, sums therein contained, and whole consequences thereof, and in and to all action and execution competent to me, and my foresaids, for recovery thereof: *Surrogating* and *substituting* the said C. D. and F. G. in my full right and place of the premisses; with full power to them to ask, intromit with, uplift, and receive the rents, mails, and duties of the said lands, and others foresaid, and to apply the same for their relief of the premisses; and, if needful, to call, charge, and pursue therefor, decreets thereupon to recover, and to cause put the same to execution, compone, transact, and agree thereanent, and generally every other thing concerning the premisses to do that I could have done myself, before granting hereof; which assignation I bind and oblige me to warrant from my own fact and deed allenarly. *And* it is always hereby *provided* and *declared*, that if the said C. D. and F. G. shall think fit to enter to possession of the said lands and pertinents, and uplift the rents thereof, then, and in that case, they shall only be obliged

Provisions.

obliged to hold count for their actual intromiſſions with the ſaid rents, as they ſhall be inſtructed *ſcripto*, by writs and diſcharges under their hands, and no otherwiſe; *and* it ſhall be lawful to the ſaid C. D. and F. G. to deſiſt and ceaſe therefrom, and again reaſſume the poſſeſſion thereof, from time to time, as they ſhall think proper, without being liable further than for their actual intromiſſions, as ſaid is; they being always obliged to make juſt count and reckoning to me, for the ſurplus of their actual intromiſſions, more than ſhall completely relieve them of the premiſſes. *And, laſtly*, it is hereby *provided* and *declared*, that, although the ſaid C. D. and F. G. ſhall uſe execution by horning, adjudication, or otherwiſe, upon the perſonal obligation of relief above written, yet the ſame ſhall nowiſe loſe or prejudge the infeftment to follow hereon, which ſhall ſtand good and effectual till they be fully relieved of the premiſſes: *Conſenting* to the regiſtration hereof in the books of council and ſeſſion, or others competent, that letters of horning, on ſix days charge, and all other execution needful, paſs hereon, in form as effeirs; Regiſtration.

effeirs; and thereto I conſtitute my procurators: *Attour*, I hereby deſire and require you and each of you, conjunctly and ſeverally, my bailies in that part, hereby ſpecially conſtitute; that, on ſight hereof, ye paſs to the ground of the ſaid ſubjects, and there give and deliver heritable ſtate and ſeiſine, actual, real, and corporal poſſeſſion, of *all* and *whole* the ſaid lands and others foreſaid, with the pertinents, lying, bounded, and deſcribed, in manner before mentioned, to the ſaid C. D. and F. G. and their foreſaids; and that in real warrandice, ſecurity, and relief, of the foreſaid ſums of money, principal, annualrent, and penalty, and expences of infeftment to follow hereon, as ſaid is, by delivery to them, or their certain attorney, or attornies, in their names, bearers hereof, of earth and ſtone of the ground of the ſaid lands, and all other ſymbols requiſite: *Providing* and *declaring* always, as it is hereby expreſsly provided and declared, that the ſaid C. D. and F. G. and their foreſaids, their entry to the ſaid lands, and uplifting the ſaid rents, maills, and duties is

Precept of ſeiſine.

Proviſion.

is, and ſhall be ſuſpended, till they are diſtreſſed for the debt above mentioned, or any part thereof, from thenceforth to be enjoyed and poſſeſſed by them, effeiring and correſponding to the diſtreſs, ay and while they be fully freed and relieved of the ſaid debt; and of all coſt, ſkaith, damages or expences they may ſuſtain therethrough, and that either by me or my foreſaids making payment thereof, or by intromiſſion with the rents, maills, duties, and caſualties of the ſaid lands, and others foreſaid; and being ſo relieved, that then, and immediately thereafter, they ſhall be bound and obliged to relinquiſh the poſſeſſion, and renounce and overgive, to and in favour of me, and my foreſaids, the whole lands and others above mentioned; and this in nowiſe ye leave undone; the which to do I commit to you, and each of you, conjunctly and ſeverally, my full power by this my precept, directed to you for that effect. *In witneſs*, &c.

Obſervations.

Effect of theſe rights.

If an infeftment in ſecurity be granted to a creditor, he may thereupon enter to the immediate poſſeſſion of the lands, or annualrent, for payment; whereas rights of relief are conditional, and have no operation till the cautioner either pays the debt, or is diſtreſſed for it; except where the debtor is expreſsly bound to deliver to the cautioner the obligation cancelled againſt a day certain, and has failed, or where the debtor is *vergens ad inopiam*; in which caſe the cautioner may, by proper diligence, ſecure the debtor's funds for his relief, even before payment or diſtreſs. In a right in ſecurity, intimation of the aſſignation to the rents is ſeldom uſed, as commencing a proceſs therefore is equivalent. If the creditor wants payment of his money, he inſiſts in an *action of poinding the ground*; which differs from poinding for perſonal debts in this, that as it proceeds on a real right, it may be directed againſt al

Action of *poinding the ground.*

all goods that can be found on the lands burdened, even though the original debtor ſhould, before the bringing of the action, be diveſted of the property, in favour of a ſingular ſucceſſor : But goods brought upon the ground by ſtrangers have been found not ſubject to this diligence ; and the goods of a tenant cannot be poinded for more than his term's rent, by 1469, c. 37. As this act was made in favour of tenants, to ſave them from payment to creditors after having paid their maſters, it has been explained that the tenant cannot be poinded for more than he was in fact owing his maſter of paſt rents, at the time of poinding ; and that therefore what is due, though more than a year's rent of arrears, muſt be ſubject ; for it cannot be underſtood of what the tenant is due leſs than a year's rent, as the tenant, paying his rent before due, is preſumed to be in colluſion with the maſter, and therefore, if arreſtment or other diligence is uſed to attach it when due, he will be liable to pay it a ſecond time ; or the creditor may bring an action of maills and duties : It is directed againſt the tenant, and natural poſſeſſors

Action of *maills and duties.*

poſſeſſors of land eſtates, for payment to the purſuer of the rents remaining due by them for paſt crops, and of the full rent for the future. Where the purſuer of this action founds upon right, not on poſſeſſion, he muſt make the proprietor, from whom the tenants derive their right, party to the ſuit; and he muſt ſupport his claim by titles of property or diligences, preferable to thoſe in the perſon of his competitor. In the poſſeſſory action, if he produce a ſeiſine, it is ſufficient title, and it is enough if he call the natural poſſeſſors; and though one ſhould claim upon a title preferable to that of the poſſeſſor, he cannot compete with him in the poſſeſſion, till, in a formal proceſs of reduction, he ſhall obtain the poſſeſſor's title declared void.

Diſpoſition and aſſignation to an heritable bond before inſeſtment.

Diſpoſition and Aſſignation to an heritable Bond before Inſeſtment.

Premiſſes. Granter. Narrative.

Be it known to all men, by theſe preſents, me C. D. in E. *whereas* A. B. of C. by

by his heritable bond, dated —— (for the cauſes therein ſpecified), *bound* and *obliged* him, his heirs and ſucceſſors, to have paid to me, my heirs and aſſignees, the ſum of —— at and againſt the term of —— with —— money foreſaid, of liquidate penalty in caſe of failure, and the legal intereſt of the ſaid principal ſum from the date of the ſaid bond, and yearly, termly, and proportionally thereafter, during the not payment. And for my further ſecurity thereof, the ſaid A. B. bound and obliged him to infeft and ſeiſe me, and my foreſaids, *not only* in an annualrent of —— or ſuch an annualrent, leſs or more, as ſhould by law for the time effeir and correſpond to the ſaid principal ſum of —— to be uplifted and taken yearly, at two terms in the year, Whitſunday and Martinmas, by equal portions, beginning the firſt term's payment thereof at the term of Martinmas then next, for what part of the intereſt ſhould then be due, and the next term's payment at the term of Whitſunday following; and ſo forth, yearly and termly thereafter, during the not redemption, with —— for each term's failure in payment

ment of the ſaid annualrent; *furth* of *all* and *whole* the ſaid A. B.'s lands of —— (inſert them), or furth of any part or portion thereof, readieſt rents, maills, and duties thereof; *but alſo* in the ſaid lands themſelves, for, and in real ſecurity, to me, and my foreſaids, of the ſaid principal ſum, intereſt, and penalty, and of the expences of infeftment to follow on the ſaid bond; to be holden, and under reverſion, in manner therein expreſſed, as the ſaid heritable bond, containing procuratory of reſignation, aſſignation to the maills and duties, precept of ſeiſine, and ſeveral other clauſes, at more length bears (*a*). *And whereas* D. E. in F. has made payment to me of a certain ſum of money for granting hereof; of which I grant receipt, renouncing all objections to the contrary (*b*); *to* have *therefore ſold*, *alienated*, and *diſponed*, as I hereby *ſell*, *alienate*, and *diſpone*, to and in favour of the ſaid D. E. his heirs and aſſignees whatever, heritably, but under reverſion, in manner after mentioned, *not only all* and *whole* the foreſaid annualrent of —— or ſuch an annualrent, leſs or more, as ſhall by law for the time effeir and correſpond

Subſumption.

Diſpoſitive.

reſpond to the ſaid principal ſum of —— to be uplifted and taken yearly, at the ſaid two terms in the year, Whitſunday and Martinmas, by equal portions, with —— for each term's failure in payment of the ſaid annualrent; *furth* of *all* and *whole* (repeat the lands), or furth of any part or portion thereof, readieſt rents, maills, farms, profits, and duties of the ſame; *but alſo* the ſaid lands themſelves, for, and in real ſecurity to him, and his foreſaids, of the ſaid principal ſum, intereſt, and penalty, and expences of infeftment to follow on the ſaid bond. *And further*, I hereby make and conſtitute the ſaid D. E. and his foreſaids, my lawful ceſſioners and aſſignees, *in* and *to* the foreſaid principal ſum of —— Sterling, —— of liquidate penalty, with the lawful intereſt of the ſaid principal ſum reſting unpaid, and in time coming, during the not payment, all ſpecified and contained in the ſaid heritable bond, with the ſaid heritable bond itſelf, procuratory of reſignation, precept of ſeiſine, aſſignation to the maills and duties, and whole other clauſes therein contained, tenor and contents thereof, and all that has followed, or

Aſſignation to the bond, and ſums therein contained.

is

is competent to follow thereon; but ſubject always to the reverſion therein contained; *with power* to the ſaid D. E. and his foreſaids, to obtain themſelves infeft and ſeiſed in the annualrent, lands, and others above written, in virtue of the unexecute procuratory of reſignation, and precept of ſeiſine, contained in the ſaid heritable bond, and this right and aſſignation of the ſame, and to ſue for the ſums thereby due, decreets thereupon to recover; and upon payment, receipts, diſcharges, renunciations, and grants of redemption, to make, grant, and ſubſcribe, and generally to do every other thing legal and neceſſary, that I could have done, before granting hereof: *Which* annualrent, lands, and others, in ſecurity thereof, above diſponed, with this preſent right and diſpoſition thereof, I bind and oblige me, and my foreſaids, to warrant to the ſaid D. E. from my own proper fact and deed, done or to be done, in prejudice hereof, allenarly. *And* I have herewith delivered to the ſaid D. E. the foreſaid bond, to be kept and uſed by him, and his foreſaids, as their own proper evident in time coming: *And*

Power to infeft in virtue thereof.

Warrandice.

Delivery of the writs.

Regiſtration.

conſent

conſent to the regiſtration, &c. *In witneſs*, &c. Subſcription clauſe.

Diſpoſition of an Annualrent, and Lands in ſecurity, by a perſon infeft on an Heritable Bond. *Diſpoſition of annualrent, and lands in ſecurity.*

Be it known, &c. (go on as in the preceding example to letter (*a*), and ſay), *whereupon* I was duly infeft, conform to inſtrument of ſeiſine in my favours, dated —— regiſtered —— as the ſaid inſtrument of ſeiſine alſo more fully bears. And whereas, &c. (to letter (*b*), and then ſay), *to have* therefore *ſold*, *alienated*, and *diſponed*, as I by theſe preſents *ſell*, *alienate*, and *diſpone*, to, and in favour of the ſaid D. E. his heirs or aſſignees whatſoever, heritably, but under reverſion, in manner after mentioned, *not only all* and *whole* the foreſaid annualrent of —— or ſuch an annualrent, leſs or more, as ſhall by law for the time correſpond to the ſaid principal ſum of —— to be uplifted at the terms Premiſſes. Narrative. Diſpoſitive.

above mentioned, with ——— for each term's failure in payment of the ſaid annualrent; *furth* of all and whole (take in the lands from the heritable bond or infeftment), or furth of any part or portion thereof, readieſt rents, maills, farms, profits, and duties of the ſame; *but alſo* all and whole the ſaid lands, and others foreſaid, themſelves, for, and in real ſecurity of the ſaid principal ſum, intereſt, penalty, and expences of infeftment. *In which* annualrent, lands, and others foreſaid, in ſecurity, I bind and oblige me, my heirs and ſucceſſors, to infeft and ſeiſe the ſaid D. E. and his foreſaids, upon their own proper charges and expences, heritably, but under reverſion, as ſaid is, by two ſeveral infeftments and manners of holding; the one thereof to be holden of me, and my foreſaids, in free blench, for payment of a penny Scots money, upon the ground of the ſaid lands, at the term of Candlemas yearly, if aſked allenarly, both for annualrent and lands; and the other of the ſaid infeftments, of my immediate lawful ſuperiors thereof, as freely as I held, or may hold the ſame myſelf: *And for effectuating* the ſaid

Oblige-ment to infeft.

Tenendas.

Procura-tory of re-ſignation.

ſaid infeftment by reſignation, I hereby *make* and *conſtitute* my procurators, to reſign, &c. *not only* the foreſaid annualrent of —— or ſuch an annualrent, &c. *but alſo all* and *whole* the ſaid lands and others before mentioned themſelves, &c. (and go on as in the procuratory of reſignation in the heritable bond, to the word *revocation* at the end of the procuratory, uſing D. E. in place of C. D.) *Further*, I hereby *make* and *conſtitute* the ſaid D. E. and his foreſaids, my ceſſioners and aſſignees, in and to the above mentioned principal ſum of —— with —— of liquidate penalty, contained in the ſaid bond, and annualrents of the ſaid principal ſum reſting unpaid ſince the term of —— and in time coming during the not redemption, and the ſum of —— as the amount of the expences of taking infeftment on the ſaid bond, with all action, diligence, and execution competent to me thereupon, together with the ſaid bond itſelf, and inſtrument of ſeiſine following thereon, with the whole articles, clauſes, tenor, and contents of the ſaid bond and infeftment. *As alſo*, I hereby *transfer*, *convey*,

Aſſignation to the principal ſum, intereſt, and penalty; and to the bond and infeftment.

Aſſignation to the rents.

convey, and *make over* to the ſaid D. E. as much of the rents, maills, duties, cuſtoms, and caſualties of the ſaid lands, as will *not only* ſatisfy and pay the foreſaid yearly annualrent, and termly failures, *but* alſo the foreſaid principal ſum, penalty, if incurred, intereſt, and expences of infeftment: *Surrogating* and *ſubſtituting* the ſaid D. E. and his foreſaids, in my full right and place of the premiſſes, with power to him or them, to intromit with, uplift, and, if need be, to ſue for the ſums of money, and rents, maills, duties, cuſtoms, and caſualties above mentioned; and, upon payment, to grant receipts, diſcharges, and renunciations, which ſhall be ſufficient to the receivers; and generally, &c. (as in the preceding example.) *And* I have herewith delivered the ſaid bond and infeftment to the ſaid D. E. to be kept and uſed by him, and his foreſaids, as their own proper writs and evidents, in time coming. (Regiſtration.) *Attour*, &c. The precept will differ in nothing from that in the bond, but uſing D. E. in place of C. D.; and, in the clauſe of reverſion, inſtead of *I and me*, '*the ſaid* '*A. B.*'

Delivery of the writs.

Regiſtration.

Precept of ſeiſine.

The

The difference betwixt this and taking a new bond, in point of expediency, will readily occur; ſuppoſe a perſon willing to accommodate the debtor to pay it, and get this conveyance, if this ſhould be the firſt incumbrance upon the eſtate in point of date, he will be preferable to the creditors in bonds of a latter date; whereas, if he paid the ſum in the original bond, and a diſcharge were granted to the debtor, and took a new bond, he would be poſtponed to theſe other creditors.

Mortification of an Annuity.

Mortification of an annuity.

Be it known to all men, by theſe preſents, *me* A. B. Eſq; of C. from pure charity, and for maintenance of the poor and indigent, to have *given*, *granted*, and *diſponed*, as I hereby *give*, *grant*, *mortify*, and *diſpone*, to and in favour of the Rev. Mr —— miniſter of the goſpel in the pariſh of ——, —————— and —— preſent elders of the ſaid pariſh, and to their

Premiſſes.

Granter.

Conſideration.

Diſpoſitive.

their ſucceſſors in their reſpective offices, as truſtees for, and to the uſe and behoof of the poor and indigent perſons after mentioned, and with and under the conditions and proviſions after ſpecified; *all* and *whole* an annuity of —— bolls meal, and —— bolls bear, of the meaſure of the county of —— yearly to be uplifted and taken, betwixt Chriſtmas and Candlemas, beginning the firſt term's payment thereof betwixt Chriſtmas 178 and Candlemas 178 , *furth of all* and *whole* (deſcribe the lands), or furth of any part or portion thereof, readieſt rents, maills, profits, and duties of the ſame. *And* I *bind* and *oblige* me, my heirs and ſucceſſors, to infeft and ſeiſe the ſaid Mr ——— miniſter ——————————— and —— elders, and their ſucceſſors in their ſaid offices, as truſtees foreſaid, for the uſe and behoof of the poor after mentioned, and on the conditions after expreſſed; *in all* and *whole* the foreſaid annuity of —— yearly, to be uplifted and taken between Chriſtmas and Candlemas yearly, furth of the ſaid lands and pertinents, by a ſingle infeftment; *to be holden* of me, my heirs, and

Obligement to infeft.

Tenendas.

and ſucceſſors, in free blench, for payment of a penny Scots money, upon the ground of the ſaid lands yearly, at the term of Whitſunday, if aſked, allenarly. (*Warrandice* of the mortification and annuity; *aſſignation* to the rents to the extent thereof, and to the writs for defending it; *obligation* to make the writs forthcoming; *regiſtration*; *precept of ſeiſine*; wherein are inſert the conditions and proviſions; ſubſcription clauſe.)

Warrandice. Aſſignation to the rents and writs. Obligation to make the writs forthcoming. Regiſtration. Precept of ſeiſine. Subſcription clauſe.

Inſtrument of Seiſine on an Heritable Bond.

—on an heritable bond.

Inſtrument of ſeiſine upon an heritable bond proceeds upon the following narrative:

Having, and in his hands *holding*, an heritable bond of the date, and containing the precept of ſeiſine after inſert, made and granted by A. B. of C. whereby he granted him to be juſtly addebted, reſting, and owing to the ſaid C. D. the ſum of —— Sterling;

Narrative.

Sterling; which ſum of —— he bound and obliged him, his heirs, executors, and ſucceſſors whatſoever, to repay, and again deliver to the ſaid C. D. his heirs or aſſignees; and that at and againſt the term of Martinmas next to come, with —— like money of liquidate penalty, in caſe of failure, and the legal intereſt of the ſaid principal ſum from the date thereof to the ſaid term of payment; and yearly, termly, and proportionally thereafter, during the not payment thereof. *And* for the ſaid C. D. and his foreſaids, their further ſecurity, and more ſure payment of the foreſaid ſums, and without prejudice to the perſonal obligation above written, the ſaid A. B. bound and obliged him, and his foreſaids, upon their own proper charges and expences, duly and lawfully to infeft and ſeiſe the ſaid C. D. and his foreſaids, heritably, but under reverſion, in manner therein and after mentioned, *not only* in *all* and *whole* an annualrent of ——, or ſuch an annualrent, leſs or more, as ſhould by law for the time effeir and correſpond to the ſaid principal ſum of —— to be uplifted and taken, at two terms in the year, Whit-

ſunday

ſunday and Martinmas, by equal portions, beginning the firſt term's payment thereof at the ſaid term of Martinmas next to come, for what part thereof ſhall then be due; and the next term's payment at the term of Whitſunday following, and ſo forth yearly and termly thereafter, during the not redemption, with —— for each term's failure in payment of the ſaid annualrent; *furth* of *all* and *whole* (take in the lands), lying within the pariſh of —— and ſhire of ——, or furth of any part or portion thereof, readieſt maills, farms, profits, and duties of the ſame; *but alſo* in *all* and *whole* the ſaid lands, and others foreſaid, themſelves, for, and in real ſecurity to the ſaid C. D. and his foreſaids, of the ſaid principal ſum, intereſt that may be due thereon, and penalty, if incurred, and of the expences of infeftment to follow thereon, if laid out by them; to be holden, and under reverſion, in manner mentioned in the ſaid heritable bond, as the ſame, containing procuratory of reſignation, clauſe of abſolute warrandice, aſſignation to the rents, maills, and duties, the precept of ſeiſine after inſert, and ſeveral other clauſes,

Delivery of ſeiſine.

more fully bears: *Which* heritable bond, &c. &c. (and in the delivery of ſeiſine ſay), gave and delivered to the ſaid C. D. heritable ſtate and ſeiſine, actual, real, and corporal poſſeſſion, *not only* of *all* and *whole* the foreſaid annualrent of ——— or ſuch an annualrent, leſs or more, as ſhall by law for the time effeir and correſpond to the ſaid principal ſum of ——— yearly to be uplifted, and taken at the ſaid two terms in the year, Whitſunday and Martinmas, by equal portions, beginning the firſt term's payment thereof at the ſaid term of Martinmas next to come, for what part thereof ſhall then be due; and the next term's payment at the term of Whitſunday following, and ſo forth yearly and termly thereafter, during the not redemption, with —— for each term's failure in payment of the ſaid annualrent; *furth* of *all* and *whole* (repeat the lands ſhortly), or furth of any part or portion thereof, readieſt rents, maills, and duties of the ſame; *but alſo* of *all* and *whole* the ſaid lands and others foreſaid, themſelves, for, and in real ſecurity to the ſaid C. D. and his foreſaids, of the ſaid principal ſum, intereſt that may be due theeon,

thereon, liquidate penalty, if incurred, and expences of infeftment to follow on the ſaid heritable bond: And that by deliverance to the ſaid attorney, for, and in name and behalf of the ſaid C. D. of earth and ſtone of the ground of the ſaid lands, and a penny money for the ſaid annualrent, as uſe is, and all other ſymbols uſual and requiſite; to be holden, and under reverſion, in manner mentioned in the ſaid heritable bond, after the form and tenor of the ſaid heritable bond, and precept of ſeiſine, in all points. *Whereupon*, &c.

—an heritable bond of relief.

Inſtrument of Seiſine upon an Heritable Bond of Relief.

This inſtrument proceeds upon the following narrative:

Narrative.

Having, and in his hands *holding*, an heritable bond of relief, of the date, and containing the precept of ſeiſine after inſert, made and granted by A. B. of C. whereby the ſaid A. B. on the narrative that

that C. D. Eſq; of E. F. G. Eſq; of H. and he the ſaid A. B. by their bond, dated —— bound and obliged them, &c. (narrate the bond as it is narrated in the bond of relief), *and that whereas* notwithſtanding of the above bond, he thereby declared that the above ſum was received by him the ſaid A. B. and wholly applied to his proper uſe and behoof, and no part thereof to the uſe and behoof of the ſaid C. D. and F. G.; *therefore* he thereby *bound* and *obliged* himſelf, his heirs, &c. (narrate the perſonal obligation of relief); *and* for their further ſecurity anent their relief of the ſaid bond, and more ſure payment of the foreſaid principal ſum, annualrents that may fall due thereon, and penalty, if incurred, the ſaid A. B. bound and obliged him, and his foreſaids, upon their own proper charges and expences, duly and validly to infeft and ſeiſe the ſaid C. D. and F. G. and their foreſaids, in *all* and *whole* (inſert the lands), and that in real warrandice, ſecurity, and relief to the ſaid C. D. and F. G. and their foreſaids, of the ſums of money, principal, annualrents, and penalty above mentioned, and expences of infeftment

ment to follow thereon; ſo that, if it ſhould happen the ſaids C. D. and F. G. or their foreſaids, to be diſtreſſed for the ſame, or any part thereof, then, and immediately thereafter, they ſhould have full and free ingreſs and acceſs to the lands, and others above mentioned, and maills and duties of the ſame; at leaſt to ſo much thereof as ſhould be correſpondent to the ſaid diſtreſs, and to the damages and expences to be ſuſtained therethrough; to be holden, and under reverſion, in manner therein mentioned, as the ſaid heritable bond of relief, containing clauſe of warrandice, aſſignation to the rents, the precept of ſeiſine after inſert, and ſeveral other clauſes, in itſelf more fully bears, &c.

Delivery of ſeiſine.

The delivery of ſeiſine is in terms of the precept of ſeiſine; 'but always with and under the proviſions and declarations above mentioned.'

Inſtru-

—on diſpoſition and aſſignation to an heritable bond.

Inſtrument of Seiſine upon a Diſpoſition and Aſſignation to an Heritable Bond.

This inſtrument of ſeiſine has what follows added to the narrative of the heritable bond:

Additional narrative.

As alſo having, and in his hands *holding*, a diſpoſition and aſſignation, dated —— made and granted by the ſaid C. D. whereby (for the cauſes therein ſpecified), he *ſold*, *alienated*, and *diſponed*, to, and in favour of the ſaid D. E. his heirs and aſſignees whatſoever, heritably, but under reverſion, in manner therein mentioned, *not only all* and *whole* the foreſaid annualrent of —— or ſuch an annualrent, leſs or more, as ſhould by law for the time effeir and correſpond to the ſaid principal ſum of ——, to be uplifted and taken yearly, at the ſaid two terms in the year, Whitſunday and Martinmas, by equal portions, with —— for each term's failure in payment of the ſaid

ſaid annualrent; *furth* of *all* and *whole* (inſert the lands), or furth of any part or portion thereof, readieſt rents, maills, farms, profits, and duties of the ſame; but alſo the ſaid lands themſelves, for, and in real ſecurity to him, and his foreſaids, of the ſaid principal ſum, intereſt, and penalty, and expences of infeftment to follow on the ſaid bond; and ſpecially aſſigned to him the bond above narrated, with the procuratory of reſignation, and precept of ſeiſine therein contained, and whole heads, clauſes, tenor, and contents thereof; with power to the ſaid D. E. and his foreſaids, to obtain themſelves infeft and ſeiſed in the ſaid annualrent, lands, and others above written, in virtue of the unexecute procuratory of reſignation, and precept of ſeiſine, contained in the ſaid bond, and of the ſaid right and aſſignation to the ſame; as the ſaid diſpoſition and aſſignation, containing ſeveral other clauſes, in itſelf alſo more fully bears, &c.

Inſtru-

—on diſpoſition of annualrent.

Inſtrument of Seiſine upon a Diſpoſition of Annualrent.

Invocation, &c. Narrative.

In, &c. *Having*, and in his hands *holding*, a diſpoſition, dated —— made and granted by C. D. in E. whereby (for the cauſes therein ſpecified), he *ſold*, *alienated*, and *diſponed*, to and in favour of the ſaid D. E. his heirs or aſſignees whatſoever, heritably, but under reverſion, in manner after mentioned; *not only all* and *whole* an annualrent of —— or ſuch an annualrent, leſs or more, as ſhould by law for the time effeir and correſpond to the principal ſum of —— to be uplifted and taken, at two terms in the year, Whitſunday and Martinmas, by equal portions, with —— for each term's failure in payment of the ſaid annualrent; *furth* of *all* and *whole* (inſert the lands), or furth of any part or portion thereof, readieſt rents, maills, farms, profits, and duties of the ſame; *but alſo all* and *whole* the ſaid lands themſelves, for

and in real ſecurity to him, and his foreſaids, of the ſaid principal ſum, intereſt, and penalty, and of the expences of infeftment following on the bond therein mentioned, to be holden, and under reverſion, in manner therein and after mentioned, as the ſaid diſpoſition, containing obligement to infeft by two ſeveral infeftments and manners of holding, procuratory of reſignation, aſſignation to the foreſaid bond, and inſtrument of ſeiſine following thereon, and to the ſums of money, principal, intereſt, and penalty therein contained, and to the rents, maills, and duties of the ſaid lands, the precept of ſeiſine after inſert, and ſeveral other clauſes, more fully bears, &c.

Inſtrument of Seiſine upon a Mortification of an Annuity.

—*on mortification of an annuity.*

Having, &c. a diſpoſition, or deed of mortification, dated, &c. whereby the ſaid A. B. (for the cauſes therein ſpecified),

gave, *granted*, *mortified*, and *diſponed*, to and in favour, &c. *and* bound and obliged him, &c. to be holden in manner therein mentioned; as the ſaid diſpoſition, or deed of mortification, containing clauſe of warrandice, aſſignation to the rents and writs, the precept of ſeiſine after inſert, and ſeveral other clauſes, more fully bears, &c. &c.

TITL

TITLE VI.

Bonds and Diſpoſitions under Reverſion.

Obſervations.

BY the preſent practice, a bond and diſpoſition under reverſion, nearly of the nature of an improper wadſet, is frequently granted for ſecurity of money lent. This ſpecies of ſecurity would be ſeldom uſed during the ſubſiſtence of wardholding, leſt being conſtructed, in lands held ward, into a right of property, it might ſubject the granter to recognition, and the receiver to many of the caſualties connected with that manner of holding: But, ſince the act aboliſhing wardholding, this

this form of a ſecurity has been commonly uſed. The form of it is as follows:

Bond and diſpoſition under reverſion.

Bond and Diſpoſition under Reverſion.

Granter. Receiver.

I, A. B. of C. grant me to have inſtantly borrowed from C. D. in E. the ſum of —— pounds Sterling, whereof I hereby acknowledge the receipt, renouncing all objections to the contrary; which ſum of —— I *bind* and *oblige* me, my heirs, executors, and ſucceſſors whatſoever, to repay, and again deliver to the ſaid C. D. his heirs or aſſignees, and that at and againſt the term of ——— next to come, with —— of penalty and liquidate expences, in caſe of failure; together alſo with the due and ordinary annualrent of the ſaid principal ſum, from the date of theſe preſents, to the ſaid term of payment, and yearly, termly, and proportionally thereafter, during the not payment of the ſame (*a*). *And* for the ſaid C. D. and his foreſaids, their further ſecurity,

Perſonal obligation.

Subſumption.

ſecurity, and more ſure payment of the ſaid principal ſum of —— pounds Sterling, annualrents that may become due thereon, and liquidate penalty before mentioned, if incurred, *I* the ſaid A. B. hereby *ſell*, *alienate*, and *diſpone*, from me, my heirs, and ſucceſſors, *to* and *in favour* of the ſaid C. D. his heirs or aſſignees, heritably, but redeemable always, and under reverſion, in manner after expreſſed, *all* and *whole* (inſert the lands), *in real* ſecurity, and for payment to him, and his foreſaids, of the ſaid principal ſum, annualrent, and penalty, if incurred: *In* which lands, and others foreſaid, with the pertinents, I *bind* and *oblige* me, and my foreſaids, on our own proper charges and expences, duly and validly to infeft and ſeiſe the ſaid C. D. and his foreſaids, redeemable always, and under reverſion, as ſaid is, by two ſeveral infeftments and manners of holding, the one thereof to be holden of me, my heirs, and ſucceſſors, in free blench, for payment of a penny Scots money upon the ground of the ſaid lands, at the term of Whitſunday yearly, in name of blench duty, if aſked allenarly; and the other of the ſaid infeftments,

Diſpoſitive.

Obligement to infeft.

Tenendas.

feſtments, to be holden from me, and my foreſaids, of our immediate lawful ſuperiors of the ſame, in the ſame manner, and as freely, in all reſpects, as I held, hold, or may hold the ſame myſelf; and that either by reſignation, or confirmation, or both, the one without prejudice of the other: *And* for effectuating the ſaid infeftment by reſignation, I hereby *make* and *conſtitute* and each of them, conjunctly and ſeverally, my lawful and irrevocable procurators, for me, and in my name, to *reſign*, as I by theſe preſents *reſign*, *renounce*, *ſurrender*, *ſimpliciter upgive*, *overgive*, and *deliver*, *all* and *whole* the lands, and others foreſaid, lying and deſcribed in manner above mentioned, and here held as repeated *brevitatis cauſa*, *in real* ſecurity, and for payment to the ſaid C. D. and his foreſaids, of the foreſaid principal ſum, annualrent, and penalty, if incurred, *in the hands* of my immediate lawful ſuperiors, or their commiſſioners, having power to receive reſignations, and grant new infeftments thereupon; *in favour*, and for new infeftment of the ſame, to be made and granted to the ſaid C. D. and

Procuratory of reſignation.

and his foreſaids, in ſuch due and competent form as effeirs; *redeemable* always, and under reverſion, in manner after mentioned: Acts, inſtruments, and documents, to aſk and take, and generally every other thing in the premiſſes to do, which I could do myſelf, if perſonally preſent, or which to the office of procuratory in ſuch caſes is known to belong: All which I promiſe to hold firm and ſtable, without revocation. *Which* ſubjects before diſponed, with this preſent right and diſpoſition, I bind and oblige me, and my foreſaids, to warrant to the ſaid C. D. and his foreſaids, at all hands, and againſt all deadly, as law will. *And further*, for the ſaid C. D. and his foreſaids, their further ſecurity, and more ſure payment, I hereby *make* and *conſtitute* them my lawful ceſſioners and aſſignees, *not only* in and to the rents, maills, profits, and duties of the lands, and others before diſponed, for this preſent year, and in all time coming; at leaſt ſo much thereof as will completely ſatisfy and pay them of the foreſaid principal ſum of —— annualrents that may become due thereon, and liquidate penalty before mentioned, if incurred;

Warrandice.

Aſſignation to the rents,

and writs. curred; *but alſo* in and to the whole writs and evidents, both old and new, of and concerning the ſaid lands, and others before diſponed, conceived, or that may be anywiſe interpreted, in favours of me, my authors, and predeceſſors, with all that has followed, or is competent to follow on the ſaid writs; with power to the ſaid C. D. and his foreſaids, if they ſhall think proper, to enter to the poſſeſſion of the ſaid lands, and others before diſponed, and to ſue for, and uplift the rents, maills, and duties of the ſame, decreets of maills and duties, and others in the premiſſes to recover, and to execution cauſe be put, receipts and diſcharges to grant, output and input tenants, uſe warnings, proſecute removings, and generally every other thing anent the premiſſes to do, which I could have done myſelf, before granting the preſent right and aſſignation; which I oblige me, and my foreſaids, to warrant as follows, viz. at so the rents, maills, and duties, from our own facts and deeds only, and in ſo far as concerns the ſaid writs and evidents at all hands. *And alſo declaring* hereby, that the ſaid C. D. and his foreſaids,

Declaration **that the receiver ſhall only be liable for intromiſſions.**

ſaids, ſhall only be liable for their actual intromiſſions with the ſaid rents, but not for omiſſions, and that they may enter to the poſſeſſion of the ſaid rents, and continue therein or not, as they may think proper (*b*). *Providing* always, and *declaring*, as it is hereby expreſsly *provided* and *declared*, that the ſaid lands and others before diſponed, are, and ſhall be redeemable and under reverſion, by me the ſaid A. B. my heirs and aſſignees, from the ſaid C. D. and his foreſaids, by payment making to them at the ſaid term of ——— or at any other term of Martinmas or Whitſunday thereafter, of the ſaid principal ſum of —— annualrents that ſhall be due thereupon, and liquidate expences before mentioned, if incurred, or conſignation of the ſaid ſums in the hands of the caſhier or treaſurer of the Royal Bank, or Bank of Scotland, at the peril of the conſigner, upon the premonition to the ſaid C. D. or his foreſaids, of forty days; and that a copy of theſe preſents, or of the infeftment to follow hereon, ſhall be as valid and effectual, for uſing the ſaid order of redemption, as if a particular letter of reverſion

Clauſe of reverſion.

Declaration, that uſing diligence ſhall not hurt the right.

was ſigned and regiſtered apart (*c*). *And* it is hereby *alſo declared*, that although the ſaid C. D. and his foreſaids, ſhall uſe diligence, perſonal or real, for payment of the ſaid ſums, yet the ſame ſhall not hurt or prejudge theſe preſents, or the infeftment to follow hereupon, but the ſame ſhall ſubſiſt and be effectual until the above ſums are ſatisfied and paid. *And* I *bind* and *oblige* me, and my foreſaids, to make the foreſaid writs and evidents forthcoming to the ſaid C. D. and his foreſaids, on all occaſions neceſſary, on their receipt and obligement for redelivery within a reaſonable time: *And conſent* to the regiſtration hereof in the books of council and ſeſſion, or others competent, to have the ſtrength of a decreet, that letters of horning, on ſix days charge, and all other execution neceſſary, in form as effeirs, may paſs hereon; and thereto *conſtitute*

Obligement to make the writs forthcoming.

Regiſtration.

Precept of ſeiſine.

my procurators: *Attour*, to the effect the ſaid C. D. and his foreſaids, may be more readily infeft and ſeiſed in the ſaid lands, and others before diſponed, to be holden in manner above mentioned, I hereby

hereby deſire, and require you
and each of you, conjunctly and ſeverally, my bailies in that part, ſpecially conſtitute, to the effect after mentioned, that, on ſight hereof, ye paſs to the ground of the ſaid lands, and others before diſponed, and there give and deliver heritable ſtate and ſeiſine, actual, real, and corporal poſſeſſion, of *all* and *whole* the lands and others above diſponed, lying and deſcribed as aforeſaid, and here held as repeated *brevitatis cauſa*, *in real ſecurity*, and for payment of the foreſaid principal ſum, annualrent, and penalty, if incurred, to the ſaid C. D. and his foreſaids; and that by deliverance to him or them, or his or their certain attorney, or attornies, in his or their names, bearers hereof, of earth and ſtone of the ground of the ſaid lands, and all other ſymbols uſual and neceſſary, *redeemable* always, and under reverſion in manner aforeſaid; and this in nowiſe ye leave undone; the which to do, I commit to you, conjunctly and ſeverally, my full power, by this my precept of ſeiſine, directed to you for that effect. *In witneſs*, &c.

Subſcription clauſe.

There

Variations.

There is commonly inſert at letter (*b*), an obligation to enter the heirs or ſingular ſucceſſors of the diſponee *gratis*, and to aſſign any caſualties that may fall, in caſe they ſhall incline to hold baſe.

The two following clauſes have, for ſome time paſt, been frequently inſert in bonds and diſpoſitions under reverſion; and may come in at letters (*a*) and *c*).

Obligation to give intimation previous to a demand of payment.

'*And* it is hereby *declared*, that the ſaid 'C. D. and his foreſaids, ſhall be bound 'and obliged to give intimation three 'months preceding any term of Martin-'mas or Whitſunday, at which he or they 'ſhall incline to have payment of the ſaid 'principal ſum and annualrent; and that 'ſuch intimation being made to me the 'ſaid A. B. or my foreſaids, perſonally, or 'at our dwelling-places, ſhall be ſufficient 'notification of their intention to demand 'payment thereof.'

Power to ſell.

'*And declaring alſo*, as it is hereby ſpe-'cially *provided* and *declared*, that if I the 'ſaid A. B. ſhould fail to make payment 'of the ſums that ſhall be due by the per-'ſonal obligation above mentioned, within 'three months after demand of payment is

'intimated

'intimated to me, my heirs, and ſucceſſors,
'in manner before directed, that then, and
'in that caſe, it ſhall be lawful to, and in
'the power of the ſaid C. D. or his fore-
'ſaids, within three months after expira-
'tion of the firſt three months, to ſell and
'diſpoſe upon the ſaid lands, and others
'before mentioned, upon previous adver-
'tiſement weekly, for at leaſt two months,
'in the Edinburgh Evening Courant; and
'that by public auction at Edinburgh, to
'the higheſt offerer, and upon payment
'and recovery of the price that ſhall be
'given therefor, to hold count and reckon-
'ing to me the ſaid A. B. and my fore-
'ſaids, for the ſame, after deduction of the
'ſums hereby ſecured, and expences that
'ſhall be laid out by them in conſequence
'hereof, either in ſale of the lands or o-
'therwiſe; and, for that end, to enter into
'articles of roup, grant diſpoſitions con-
'taining procuratory of reſignation, aſſig-
'nation to the writs and evidents, rents,
'mails, and duties, and clauſe of warran-
'dice, binding me the ſaid A. B. and my
'foreſaids, in abſolute warrandice of ſuch
'diſpoſition, and binding and obliging us
'to confirm and corroborate the ſame, and

'grant

'grant all other deeds and ſecurities neceſ-
'ſary and requiſite by the laws of Scot-
'land for rendering the ſaid ſale complete;
'*declaring*, that the purchaſer, or purcha-
'ſers, ſhall nowiſe be concerned with the
'application of the price, nor with any of
'the conditions or proviſions herein men-
'tioned; but that the ſale to him or them
'ſhall be equally good as if made by my-
'ſelf: *And declaring always*, that in car-
'rying the ſaid ſale into execution, it ſhall
'be lawful to the ſaid C. D. and his fore-
'ſaids, to prorogate or adjourn the day of
'ſale, from time to time, as they ſhall ſee
'cauſe, notice being always given in the
'Edinburgh newſpapers above mentioned;
'and to expoſe the ſaid lands to ſale at the
'ſaid ſum of ——, or at any higher ſum
'he or they ſhall chuſe, any law or prac-
'tice to the contrary notwithſtanding.'

Obſervations.

This laſt clauſe, it is believed, was firſt uſed in this country in the ſecurities granted to the Meſſ. Douglas, Heron, and Company Bank, and has been ſince frequently uſed, or a clauſe to the ſame purpoſe; though it is imagined few ſales have taken

taken place in conſequence thereof, and in the manner thereby pointed out.

It is thought that the above bond and diſpoſition affords no ſufficient ground for ſtriking a perſon off the roll of freeholders, on the head of an alteration of circumſtances, as having diſponed; as, by act 1681, it is enacted, 'that no perſon infeft for relief, or payment of ſums, ſhall have vote, *but the granters of ſuch rights, their heirs and ſucceſſors*:' Though, if the ſum is nearly equal to the value of the lands, and it contains a power to ſell, it ſeems to be little different in this reſpect, on ſtrict principles, from a truſt-diſpoſition, which (as will be afterwards noticed) is an objection. It may, therefore, poſſibly be thought more prudent, either to leave this clauſe out, to take the diſpoſition held *de me*, or an heritable bond in place of it.

—not a ground for ſtriking a freeholder off the roll.

If the diſpoſition is granted to be held *de me*, leave out ſuch part of the obligation to infeft as relates to holding *a me*, and the *procuratory of reſignation.*

—if held *de me.*

A *diſpoſition and aſſignation* to a *bond and diſpoſition under reverſion*, or a *diſpoſition* thereof after infeftment thereon, differs in nothing

Conveyance thereof.

nothing from a conveyance of a *right in ſecurity*, only in this, that it conveys the lands diſponed in ſecurity redeemable in manner mentioned in the bond of diſpoſition, in place of conveying the annualrent and lands in ſecurity.

Inſtrument of ſeiſine on bond and diſpoſition under reverſion.

Inſtrument of Seiſine on Bond and Diſpoſition under Reverſion.

This inſtrument will go on as any other inſtrument of ſeiſine to the narrative, which will be in theſe terms:

Narrative. *Having*, and in his hands *holding*, a principal bond and diſpoſition under reverſion, of the date contained in the precept of ſeiſine after inſert, made and granted by A. B. of C. whereby he granted him to have inſtantly borrowed from the ſaid C. D. the ſum of —— Sterling, whereof he acknowledged the receipt, renouncing all objections to the contrary; which ſum he thereby binds and obliges him, his heirs, executors, and ſucceſſors whatſoever, to repay, and again deliver to the ſaid C. D.

his heirs or aſſignees, and that at and a-gainſt the term of —— then next to come, with —— of penalty and liquidate expen-ces, in caſe of failure; together alſo with the due and ordinary annualrent of the ſaid principal ſum, from the date of the ſaid bond and diſpoſition, to the ſaid term of payment, and yearly, termly, and pro-portionally thereafter, during the not pay-ment of the ſame. *And* for the ſaid C. D. and his foreſaids, their further ſecurity, and more ſure payment of the ſaid princi-pal ſum of —— pounds Sterling, annual-rents that might become due thereon, and liquidate penalty before mentioned, if in-curred, the ſaid A. B. thereby *ſold*, *aliena-ted*, and *diſponed*, from him, his heirs, and ſucceſſors, to and in favour of the ſaid C. D. his heirs or aſſignees, heritably, but re-deemable always, and under reverſion, in manner therein and after expreſſed; *all* and *whole* (inſert the lands), in real ſecu-rity, and for payment to him, and his fore-ſaids, of the ſaid principal ſum, annualrent, and penalty, if incurred: *And* it is thereby expreſsly *provided* and *declared*, that the ſaid lands and others before diſponed are,

and ſhall be redeemable, and under reverſion, by the ſaid A. B. his heirs and aſſignees, from the ſaid C. D. and his foreſaids, by payment making to them at the ſaid term of —— or at any other term of Martinmas or Whitſunday thereafter, of the ſaid principal ſum of —— annualrents that ſhall be due thereupon, and liquidate expences before mentioned, if incurred, or conſignation of the ſaid ſums, in the hands of the caſhier or treaſurer of the Royal Bank, or Bank of Scotland, at the peril of the conſigner, upon the premonition to the ſaid C. D. or his foreſaids, of forty days; and that a copy of the ſaid bond and diſpoſition, or of the infeftment to follow thereon, ſhould be as valid and effectual for uſing the ſaid order of redemption, as if a particular letter of reverſion was ſigned and regiſtered apart (*a*); as in the ſaid bond and diſpoſition, under reverſion of the date foreſaid (*b*), containing therein an obligement to infeft, by the two manners of holding therein mentioned, a procuratory of reſignation, clauſe of abſolute warrandice, an aſſignation to the rents, maills, farms, profits, and duties of the ſaid lands

and

and others thereby diſponed, to the writs and evidents, the precept of ſeiſine after inſert, and ſeveral other clauſes, at more length is contained: *Which* bond and diſpoſition under reverſion, &c.

Variations if clauſe of intimation of demand of payment; and power to ſell.

And in caſe the two clauſes above mentioned are inſert, ſay at letter (*a*), 'But declaring alſo, as it is thereby ſpecially *provided* and *declared*, that, if the ſaid A. B. 'ſhould fail to make payment of the ſums 'that ſhould be due by the perſonal obligation therein mentioned, within three 'months after a demand of payment was 'intimated to him, his heirs, and ſucceſſors, in manner thereby directed, that 'then, and in that caſe, it ſhould be lawful 'to, and in the power of the ſaid C. D. or 'his foreſaids, within three months after 'expiration of the firſt three months, to '*ſell*,' &c. (narrate the clauſe *verbatim* to the end.)

—if held *de me*.

If held *de me*, at (*b*) ſay, 'containing an 'obligement to infeft, by the manner of 'holding therein mentioned, a clauſe of 'abſolute warrandice,' &c.

TITLE

TITLE VII.

Contracts of Marriage, and Provisions in favour of Wives.

Observations.

BY marriage, parties are entitled to a certain ſhare of each other's fortunes: Thus, on its diſſolution, (*year and day* thereafter having elapſed, or a living child heard cry), the ſurviving huſband is entitled to the *courteſy* of the wife's lands; and the wife, in caſe of her ſurviving her huſband, to her *terce*, with certain other rights following from that connection.—Theſe, however, do not take place where a contract is entered into, unleſs ſpecially giving right thereto. Though the law has been

been exceedingly careful to provide for parties in the married ſtate, yet many reaſons occur to give occaſion for a conſenſual contract: Thus, for example, to fix and ſecure a preciſe ſum to the wife, in place of her legal proviſion of terce; to convey to the huſband, and heirs of the marriage, the wife's heritage; to nominate certain perſons as guardians or truſtees of the wife's rights, at whoſe inſtance diligence may paſs againſt the huſband, for implement of the proviſions in her favour, if there ſhould be a neceſſity for it; ſhe not being entitled to purſue any action without her huſband's conſent, and to prevent diſputes with regard to the diſſolution thereof within *year and day*.

Contract of Marriage.

Contract of marriage.

It is contracted, agreed, and *matrimonially ended*, betwixt A. B. of C. *on the one part*, and C. E. youngeſt lawful daughter of D. E. in ———, with the ſpecial advice and conſent

Premiſſes.

Parties.

consent of her said father, and the said D. E. for himself, *on the other part*, in manner under-written; *that is to say*, the said A. B. and C. E. have accepted, and by these presents accept, each of them of the other for their lawful future spouses; and promise to solemnize the honourable bond of marriage with all convenient speed. *In contemplation* of which marriage, and in consideration of the tocher after mentioned, the said A. B. (*a*) binds and obliges him, his heirs, executors, and successors, in case the said C. E. shall survive him, and that there shall be no child or children procreate and existing of the said marriage, at the dissolution thereof, to pay to her, or to her heirs, executors, or assignees, an yearly free annuity of ——— during her life; and, in the event that she shall survive him, and that there shall be children, one or more, procreated and existing of the said marriage at the time foresaid, then, and in that case, he binds and obliges him, and his foresaids, to pay to her, or her foresaids, an annuity of ——— during her life, at two terms in the year, Whitsunday and Martinmas, by equal portions, beginning

Recital:

1*st Part.*

Provision in favour of the wife of an annuity.

ning the firſt term's payment of the ſaid reſpective annuities at the firſt term of Whitſunday or Martinmas after his deceaſe, with a fifth part more of liquidate penalty, in caſe of failure. *And*, for her further ſecurity concerning the payment of the ſaid annuity, the ſaid A. B. *binds* and *obliges* himſelf to infeft and ſeiſe the ſaid C. E. in an yearly free annuity of —— to be payable to her, in caſe ſhe ſurvive him, and that there ſhall be no children procreate and exiſting of the ſaid marriage at the time of his deceaſe; and, in the event that there ſhall be children, one or more, procreate and exiſting of the ſaid marriage, at the time foreſaid, in an yearly free annuity of —— to be uplifted and taken at two terms in the year, Whitſunday and Martinmas, by equal portions, beginning the firſt term's payment at the firſt of theſe terms which ſhall happen after his deceaſe; *furth* of *all* and *whole* (inſert the lands), *or furth* of any part or portion thereof, readieſt rents, maills, farms, profits, and duties of the ſame; to be holden of him, his heirs, and ſucceſſors, in free blench, for payment of a penny Scots money, upon the

Obligement to infeft her.

the ground of the ſaid lands, at the term of Whitſunday yearly, if aſked allenarly (*b*). *And* it is hereby expreſsly *ſtipulated* and *agreed* to betwixt the ſaid parties, that the heir of the marriage ſhall have right to all lands, and other heritage, the ſaid A. B. ſhall be poſſeſſed of at the time of his death (*c*). *And* the ſaid A. B. *binds* and *obliges* him, his heirs, and ſucceſſors, to pay to the younger children which ſhall be procreated and exiſting of the ſaid marriage betwixt him and the ſaid C F. at the time of his deceaſe, the reſpective ſums after mentioned, viz. If only one, the ſum of ——; if two, the ſum of ——; if three, the ſum of ——; if four, or more, the ſum of ——, all Sterling, to be divided among them in ſuch manner as the ſaid A. B. ſhall appoint, by any writing under his hand; and, failing of ſuch writing, to be divided equally among the ſaid children; and that at the firſt term of Whitſunday or Martinmas after his deceaſe, with a fifth part more of the ſaid reſpective ſums of liquidate expences, in caſe of failure, and annualrent of the ſaid ſums from and after the ſaid term of payment, during the

Proviſion in favour of the heir.

—in favour of the younger children.

the not payment of the ſame; and, in the mean time, to aliment, educate, and clothe the ſaid younger children, ſuitably to their ſtation. *And further*, in caſe the ſaid A. B. ſhall predeceaſe the ſaid C. E. and that ſhe ſhall not reſide at the manſion-houſe of —— then, and in that caſe, he binds and obliges him, and his foreſaids, to pay to her during her life, at leaſt during her not reſidence at the ſaid houſe, or to her heirs, executors, and aſſignees, the ſum of —— yearly, in order to anſwer and pay the rent of any houſe ſhe ſhall occupy and poſſeſs; beginning the firſt term's payment thereof at the firſt term of Whitſunday after the diſſolution of the marriage. *And likewiſe*, in caſe the ſaid C. E. does ſurvive the ſaid A. B. and that there ſhall be no children exiſting of the ſaid marriage, *then*, and *in that event*, he hereby *diſpones* and *aſſigns* to her his whole houſehold furniture and pleniſhing, heirſhip moveables included; *redeemable* always by the heirs ſucceeding to him in the lands and eſtate, from the ſaid C. E. upon their making payment to her, or her foreſaids, of —— Sterling, within twelve months after

Further proviſion in favour of the wife.

after his deceaſe: *And*, in caſe ſhe does ſurvive him, as ſaid is, and that there ſhall be children procreate and exiſting of the ſaid marriage at the time of the diſſolution thereof, then, and in that caſe, he hereby *diſpones* and *aſſigns* to her the juſt and equal half of the ſaid houſehold-furniture and pleniſhing; *redeemable always* the ſaid half by the eldeſt ſon, and, failing ſons, by the daughters, his, or their paying, within the time foreſaid, to the ſaid C. E. or heirs before mentioned, the ſum of —— like money; *and*, failing of theſe redemptions, within twelve months after the diſſolution of the ſaid marriage, as ſaid is, the ſaid houſehold furniture and pleniſhing, heirſhip moveables included, or half thereof, is, and ſhall be irredeemable, in all time coming. Which proviſions before mentioned, in favour of the ſaid C. E. ſhe, with conſent of her ſaid father, accepts of, in full of all terce of lands, third or half of moveables, and every other thing ſhe can claim in and by the ſaid A. B.'s predeceaſing her, or which her executors, or neareſt of kin, can claim in and by his ſurviving her. *For which cauſes*, and *on the other*

Counterpart.

part,

part, the ſaid D. E. has, in name of dote and tocher with his ſaid daughter, made payment to the ſaid A. B. of the ſum of —— Sterling, whereof he grants the receipt; and ſhe, with his conſent, accepts thereof, in full of legitim, portion natural, bairns part of gear, and every other thing which ſhe can claim or demand by the deceaſe of her ſaid father, or on any other account whatever. *And* it is hereby *declared*, that, although this marriage ſhall diſſolve within year and day after the ſolemnization thereof, or without a living child heard cry, yet theſe preſents ſhall ſubſiſt and be effectual, any law or practice to the contrary notwithſtanding. *And*, *laſtly*, it is hereby declared, that execution ſhall paſs hereupon, for implement hereof, at the inſtance of the ſaid D. E. G. H. in ——, and J. K. in ——, or any one of them: *And* they conſent to the regiſtration hereof in the books of council and ſeſſion, or others competent, therein to remain for preſervation; and, if needful, that all execution neceſſary, in form as effeirs, paſs hereon; and thereto conſtitute their procurators. *And to the effect*

Declaration, that it ſhall be effectual, though diſſolved within *year and day*.

— at whoſe inſtance diligence paſs.

Regiſtration.

Precept of ſeiſine.

effect the ſaid C. E. may be infeft in the foreſaid reſpective annuities, payable to her in the reſpective events foreſaid, the ſaid A. B. *deſires* and *requires* you

and each of you, conjunctly and ſeverally, his bailies in that part, to the effect after mentioned, ſpecially conſtituted, that, on ſight hereof, ye paſs to the ground of the ſaid lands, and others foreſaid, and there give and deliver to the ſaid C. E. liferent ſtate and ſeiſine, actual, real, and corporal poſſeſſion, of the foreſaid yearly free annuity of ———, to be payable to her in caſe ſhe ſurvive him, and there ſhall be no children procreate and exiſting of the ſaid marriage at the time of his deceaſe; and, in the event that there ſhall be children, one or more, procreated and exiſting of the ſaid marriage, at the time foreſaid, the foreſaid yearly free annuity of ——, to be uplifted and taken at two terms in the year, Whitſunday and Martinmas, by equal portions, beginning the firſt term's payment at the firſt of theſe terms which ſhall happen after his deceaſe; *furth* of *all* and *whole* the ſaid repeat the lands), or furth of any part or portion hereof,

thereof, readieſt rents, maills, farms, profits, and duties of the ſame; and that by deliverance to her, or her certain attorney, or attornies, in her name, bearers hereof, of earth and ſtone of the ground of the ſaid lands, and a penny money for the ſaid annuity, with all other ſymbols requiſite and neceſſary; and this in nowiſe ye leave undone: The which to do, he commits to you, and each of you, conjunctly and ſeverally, his full power, by this his precept of ſeiſine, directed to you for that effect. *In witneſs* whereof, &c.

Subſcription clauſe.

Lands are ſometimes tailzied by a contract of marriage, in favour of a certain ſeries of heirs; in which caſe the contract may run thus, at letter (*a*), ſay, '*gives*, '*grants*, and *diſpones*, to and in favour of 'himſelf in liferent, and to the heirs male 'to be procreated betwixt him and the ſaid 'C. E.; whom failing, to the heirs male 'of any ſubſequent marriage he ſhall en-'ter into; whom failing, to the heirs fe-'male of this or any ſubſequent marriage; 'whom likewiſe failing, to the heirs of the 'deceaſed J. B. of ——, father of the ſaid 'A. B.; whom failing, to the ſaid A. B.

Variation, if containing *tailzie*.

Diſpoſitive.

Inſtitute.

Subſtitutes.

'his

'his heirs or aſſignees whatſoever, in fee;
'the eldeſt heir female always ſucceeding,
Obligation to uſe name and arms. 'without diviſion, and ſhe, and her heirs,
'ſucceeding to her in the lands after men-
'tioned, aſſuming, and conſtantly uſing,
'the name and arms of B. of C. *all* and
'*whole* (here take in the lands), together
'with all right, title, and intereſt, which
'the ſaid A. B. his predeceſſors or authors,
'had, have, or any ways might have, had,
'claim, or pretend to the lands and others
'before mentioned, or any part thereof.
Declaration that it ſhall not be lawful to alter the order of ſucceſſion. 'And it is hereby *declared*, that it ſhall
'not be lawful to any of the ſaid heirs or
'ſubſtitutes, to alter the order of ſucceſſion
'as hereby eſtabliſhed: *In* the which lands,
'barony, and others, the ſaid A. B. binds
Obligement to infeft. 'and obliges himſelf, his heirs, and ſucceſ-
'ſors, duly and validly, to infeft and ſeiſe
'himſelf in liferent, and the heirs male
'which ſhall be procreated betwixt him
'and the ſaid C. E.; whom failing, the
'other heirs and ſubſtitutes before men-
'tioned, and in the order before expreſſed,
'in fee; and that by reſignation thereof
Tenendas. 'in the hands of his reſpective immediate
'lawful ſuperiors thereof, *to be* holden of
'them

'them in the ſame manner, and as freely, 'in all reſpects, as the ſaid A. B. holds, or 'might have held the ſame. *And*, for ef- 'fectuating the ſaid infeftment, he hereby '*makes* and *conſtitutes*

Procuratory of reſignation.

' and each of them, conjunct- 'ly and ſeverally, his lawful and irrevo- 'cable procurators, to *reſign*, as the ſaid 'A. B. hereby *reſigns* and *ſurrenders*, *all* 'and *whole* the ſaid lands, barony, and o- 'thers before mentioned, lying, bounded, 'and deſcribed in manner before mention- 'ed, and here held as repeated *brevitatis* 'cauſa; together with all right, title, or 'intereſt, he, or his predeceſſors, or au- 'thors, had, have, or might have, claim, 'or pretend thereto, or to any part there- 'of, *in the hands* of his immediate law- 'ful ſuperiors, or their commiſſioners, ha- 'ving power to receive reſignations, and 'grant new infeftments; *in favour*, and 'for new infeftment thereof, to be made 'and granted to the ſaid A. B. in liferent, 'and to the heirs male to be procreated 'betwixt him and the ſaid C. E.; whom 'failing, to the heirs male of any ſubſe- 'quent marriage he ſhall enter into; 'whom alſo failing, to the heirs female to

' be

'be procreate betwixt him and the ſaid C. 'E.; whom likewiſe failing, to the heirs 'female of any ſubſequent marriage the 'ſaid A. B. ſhall enter into; whom fail-'ing, to the heirs of the ſaid deceaſed J. B. 'of ——; whom failing, to the ſaid A. 'B. his heirs or aſſignees whatſoever, in 'fee, the eldeſt heir female always ſuc-'ceeding without diviſion, and ſhe and her 'heirs ſucceeding to her in the ſaid lands, 'aſſuming, and conſtantly uſing, the name 'and arms of B. of C.; *and* it ſhall not be 'lawful for any of the ſaid heirs, or ſub-'ſtitutes, to alter or change the order of 'ſucceſſion, as hereby eſtabliſhed, in ſuch 'due and competent form as effeirs: *Acts*, '*inſtruments*, and *documents*, one or more, 'as many as neceſſary, in the premiſſes to 'aſk and receive, and generally every other 'thing to do, which the ſaid A. B. could 'do himſelf if perſonally preſent, or which 'to the office of procuratory in ſuch caſes 'is known to pertain; *promiſing* to hold 'the ſame firm and ſtable, without revoca-'tion;' and leave out what is between (*b*) and (*c*), then it may go on with the pro-viſions in favour of the younger children,

Proviſions in favour of young-er chil-

as

as from (*c*) to (*d*), and then take in the provision of an annuity to the wife, as from (*a*) to (*b*), and what follows after (*d*), and then go on as in the preceding example to the end. It will be unnecessary for the party disponing to insert a precept of seisine, in favour of himself, and his heirs of tailzie, before the other precept, as a charter is obtained from the superior in virtue of the procuratory of resignation, and infeftment taken on the precept therein contained; as the superior, by the first feudal rules, had the power of ascertaining to what order of heirs the fee granted by himself was to descend.

Observations.

If the lady brings lands, and these, as well as the intended husbands, are to be settled upon the heirs, it would occur that the disposition by her, or her father, of these lands, should come in first, after, *that is to say*; and go on as any other disposition, and contain precept of seisine, and then the provisions out of both estates, in favour of the lady and children of the marriage, might form the counterpart, beginning with *For which causes*, &c. Tho' sometimes, where the wife's lands are of

ſmall value, they are conveyed in the counterpart, immediately after *for which cauſes*, &c. and ſhe diſpones them according to the nature thereof, and the rights ſhe has thereto, and then her other effects.

Sometimes *the conqueſt* during the marriage is provided in a particular manner; by which term is to be underſtood, in marriage contracts, what lands ſhall be acquired by the huſband during his marriage, or in general whatever real addition ſhall be made to his eſtate during that period, whether by purchaſe or donation: But what he ſucceeds to as heir to his predeceſſor is not *conqueſt*.

To give examples of contracts of marriage ſuited to all the different caſes that may occur, ariſing from the difference in the ſituation, or circumſtances of parties, would be an endleſs and impracticable taſk: All therefore that can be expected in a work of this kind, is to give a ſketch of the plan, arrangement, and general nature of theſe writings; the other parts of them muſt be taken from ſuch parts of the forms of rights and ſecurities of lands as fall in with theſe circumſtances.

Heri-

Heritable Bond of Annuity in favours of a Wife, where there had been no Contract.

Heritable bond of annuity to a wife.

Where there has been no contract of marriage, the husband sometimes secures his wife in an annuity, by a bond of annuity in the following terms.

Be it known to all men, by these presents, me, A. B. of C. *whereas* C. E. my spouse has not yet been provided by me to any provision, in the event of my death before her, by contract of marriage, or otherwise; *and* it being just and reasonable that she should be secured in an annuity, in the event before mentioned, agreeable to the portion received with her at our marriage; *therefore*, and for other onerous causes and considerations moving me, *wit ye* me the said A. B. to be *bound* and *obliged* as I by these presents *bind* and *oblige* me, my heirs, executors, and successors whatsoever, to make payment to the said C. E. yearly,

Premisses.

Granter.

Personal obligation.

yearly, during all the days of her lifetime, in caſe ſhe ſurvive me, of a free liferent annuity of —— Sterling, at two terms in the year, Whitſunday and Martinmas, by equal portions, beginning the firſt term's payment thereof at the firſt term of Whitſunday or Martinmas after my deceaſe, and ſo forth yearly and termly thereafter during her life, with —— Sterling of liquidate penalty and expences, for each term's failure, in payment of the ſaid annuity; together with the due and ordinary annualrent of the ſaid annuity, from and after the ſaid reſpective terms of payment, during the not payment of the ſame. *And*, for her further ſecurity, and more ſure payment of the ſaid liferent annuity, I hereby *bind* and *oblige* me, and my foreſaids, duly and validly to infeft and ſeiſe the ſaid C. E. my ſpouſe, in *all* and *whole* a liferent annuity of ——, to be uplifted and taken, free of all burdens whatever, at the foreſaid two terms in the year, Whitſunday and Martinmas, by equal portions, beginning the firſt term's payment thereof at the firſt term of Whitſunday or Martinmas after my deceaſe, and ſo forth termly there-

Obligement to infeft.

after

after during her life; with the foreſaid ſum of —— of penalty and liquidate expences, for each term's failure in payment of the ſaid annuity, and annualrent thereof, from and after the ſaid term of payment, *furth* of *all* and *whole* [inſert the lands,] *or furth* of any part or portion thereof, readieſt rents, maills, profits, and duties of the ſame; and that by two ſeveral infeftments and manners of holding; the one thereof to be holden of me, my heirs and ſucceſſors, in free blench, for payment of a penny Scots yearly, upon the ground of the ſaid lands, if aſked allenarly; and the other of the ſaid infeftments to be holden from me, of my immediate lawful ſuperiors thereof, in the ſame manner and as freely as I held, hold, or may hold the ſame myſelf; *and for effectuating* the ſaid infeftment by reſignation, I hereby *make* and *conſtitute*

Tenendas.

Procuratory of reſignation.

and each of them, conjunctly and ſeverally, my lawful procurators to *reſign*, as I hereby *reſign* and *ſurrender*, from me and my foreſaids, the foreſaid annuity of —— to the ſaid C. E. during all the days of her lifetime, in caſe ſhe ſurvive me, free of all burdens,

burdens, *furth* of *all* and *whole* the ſaid lands of —— lying as ſaid is; *or furth* of any part or portion thereof, readieſt rents, maills, and duties thereof; *in the hands* of my immediate lawful ſuperiors thereof, or their commiſſioners, in their name, having power to receive reſignations and grant new infeftments thereof; *in favour of* and for new infeftment of the ſame to be made, given, and granted to the ſaid C. E. in ſuch due and competent form as effeirs, acts, inſtruments, and documents upon the premiſes to aſk, take, and raiſe, and generally every other thing thereanent to do, which to the office of procuratory in ſuch caſes is known to pertain; *promiſing* to hold the ſame firm and ſtable, without revocation: *Which* liferent annuity and lands, out of which the ſame is upliftable, I bind and oblige me to warrant to the ſaid C. E. my ſpouſe, at all hands, and againſt all deadly, as law will. *And moreover*, I hereby *make* and *conſtitute* the ſaid C. E. my ſpouſe, during all the days of her lifetime, in caſe ſhe ſurvive me, my lawful ceſſioner, and aſſignee, *in* and *to* as much of the firſt and readieſt of the rents, maills, farms, profits, and

Warrandice.

Aſſignation to the rents and writs.

and duties of the ſaid lands and pertinents as will ſatisfy and pay the foreſaid liferent annuity, upliftable at the terms, and by the proportions before mentioned; *and* in and to the writs and evidents of the ſaid lands; which aſſignation I bind and oblige me to warrant as follows, viz. as to the writs at all hands; and as to the rents, maills, and duties, from my own proper fact and deed allenarly. *And* I *bind* and *oblige* me, and my foreſaids, to make the ſaid writs forthcoming to the ſaid C. E. as oft as ſhe ſhall have occaſion therefor. *And conſent* to the regiſtration hereof in the books of Council and Seſſion, or others competent, therein to remain for preſervation, and, if needful, that all execution neceſſary, in form as effeirs, paſs hereon, and thereto conſtitute my procurators. *Attour*, to the effect the ſaid C. E. my ſpouſe may be infeft and ſeiſed in the foreſaid liferent annuity, and lands, and others foreſaid, out of which the ſame is upliftable, I hereby *deſire* and *require* you and each of you, conjunctly and ſeverally, my bailies in that part, to the effect after ſpecified, ſpecially conſti-

Obligation to make the writs forthcoming. Regiſtration.

Precept of ſeiſine.

conſtituted, that, on ſight hereof, ye paſs to the ground of the ſaid lands, and there give and deliver to the ſaid C. E. my ſpouſe, liferent ſtate and ſeiſine, actual, real, and corporal poſſeſſion of all and whole the foreſaid liferent annuity of —— Sterling, to be uplifted and taken, free of all public burdens, at the foreſaid two terms in the year, Whitſunday and Martinmas, by equal portions, beginning the firſt term's payment thereof at the firſt term of Whitſunday or Martinmas after my death, and ſo forth termly thereafter, during her life, with the ſaid ſum of —— ſterling of penalty, and liquidate expences for each term's failure in payment of the ſaid liferent annuity and annualrent thereof, from and after the ſaid term of payment, till payment of the ſame; *furth* of *all* and *whole* the ſaid lands of ——, with the pertinents thereof, lying as aforeſaid; *or furth* of any part or portion thereof, readieſt rents, maills, and duties of the ſame; and that by deliverance to her, or her certain attorney, or attornies, in her name, bearers hereof, of earth and ſtone of the ground of the ſaid lands, and a penny money for the ſaid annuity,

annuity, with all other ſymbols requiſite and neceſſary; and this in nowiſe ye leave undone; the which to do I commit to you, and each of you, conjunctly and ſeverally, my full power by this my precept of ſeiſine. In witneſs whereof, &c. Subſcription clauſe.

Inſtrument of Seiſine upon a Contract of Marriage. —upon a *Contract of marriage.*

In, &c. Compeared as procurator and attorney for, and in name of C. E. ſpouſe to A. B. of C. whoſe power, &c. *where compeared*, &c. the ſaid attorney foreſaid *having*, and in his hands *holding*, a contract of marriage, dated ——, and containing the precept of ſeiſine after inſert, entered into betwixt the ſaid A. B. of C. on the one part; and C. E. therein deſigned youngeſt lawful daughter of D. E. —— in —— with the ſpecial advice and conſent of her ſaid father, and the ſaid D. E. Invocation. Compearance. Narrative.

for himſelf, on the other part; whereby (for the cauſes therein ſpecified), the ſaid A. B. bound and obliged him, his heirs, executors, and ſucceſſors, in caſe the ſaid C. E. ſhould ſurvive him, and that there ſhould be no children procreate and exiſting of the ſaid marriage, at the diſſolution thereof, to pay to her, or to her heirs, executors, or aſſignees, an yearly free annuity of ——— during her life; and, in the event that ſhe ſhould ſurvive him, and that there ſhould be children, one or more, procreated and exiſting of the ſaid marriage at the time foreſaid, then, and in that caſe, he bound and obliged him and his foreſaids, to pay to her or her foreſaids, an annuity of ——— during her life, at two terms in the year, Whitſunday and Martinmas, by equal portions, beginning the firſt term's payment of the ſaid reſpective annuities, at the firſt term of Whitſunday or Martinmas after his deceaſe, with a fifth part more of penalty, in caſe of failure. *And*, for her further ſecurity concerning the payment of the ſaid annuity, the ſaid A. B. bound and obliged himſelf to infeft and ſeiſe the ſaid C. E. in an yearly

ly free annuity of ——, to be payable to her in caſe ſhe ſurvived him, and that there ſhould be no children procreate and exiſting of the ſaid marriage at the time of his deceaſe; and, in the event that there ſhould be children, one or more, procreate and exiſting of the ſaid marriage at the time foreſaid, in an yearly free annuity of ——; to be uplifted and taken at two terms in the year, Whitſunday and Martinmas, by equal portions, beginning the firſt term's payment at the firſt of theſe terms which ſhould happen after his deceaſe; *furth* of *all* and *whole* (inſert the lands,) *or furth* of any part or portion thereof, readieſt rents, maills, farms, profits, and duties of the ſame; to be holden in manner mentioned in the ſaid contract of marriage, as the ſame of the date foreſaid, containing the precept of ſeiſine after inſert, and ſeveral other clauſes, more fully bears. (The delivery of ſeiſine is in terms of the precept.)

Inſtru-

Inſtruments of ſeiſine propriis manibus.

Inſtruments of Seiſine propriis manibus.

In rights in favour of wives, ſeiſine is frequently given *propriis manibus*, as in the following example.

—on heritable bond of annuity in favour of a wife.

Inſtrument of Seiſine on Heritable Bond of Annuity, in favour of a Wife, propriis manibus.

Invocation.

In the name of God, amen. Be it known to all men by this preſent public inſtrument, that, upon the ——— day of ——— one thouſand ſeven hundred and eighty ——— years, and of the reign of our Sovereign Lord George the Third, by the Grace of God, King of Great Britain, France, and Ireland, defender of the faith, the ——— year; *in preſence* of me notary public, and witneſſes after deſigned, ſubſcribing, *compeared* perſonally upon the ground of the lands and others under written, A. B. of C. heritable proprietor of the

Date.

King's reign.

Compearance.

the ſaid lands and others after mentioned; *where compeared* alſo perſonally
as procurator for C. E. ſpouſe to the ſaid A. B. (whoſe power of procuratory was ſufficiently known to me notary public,) *having* and *holding* in his hands an heritable bond of proviſion, dated the —— day of —— ——— made and granted by the ſaid A. B. to and in favour of the ſaid C. E. his ſpouſe; whereby (for the onerous cauſes therein ſpecified,) he bound and obliged him, his heirs, executors, and ſucceſſors whatſoever, to make payment to the ſaid C. E. yearly, during all the days of her life, after his death, in caſe ſhe ſurvive him, of a free liferent annuity of -—— Sterling, at two terms in the year, Whitſunday and Martinmas, by equal portions, beginning the firſt term's payment thereof at the firſt term of Whitſunday or Martinmas after his deceaſe, and ſo forth, termly thereafter, during her life; with one fifth part more than each term's payment of penalty, in caſe of failure in payment of the ſaid annuity, together alſo with the due and ordinary annualrent of the ſaid annuity, from and Narrative.

and after the ſaid reſpective terms of payment, till payment of the ſame: *And*, for her further ſecurity, and more ſure payment of the ſame, he thereby *bound* and *obliged* himſelf and his foreſaids, duly and validly to infeft and ſeiſe her in *all* and *whole* a liferent annuity of ——, to be uplifted and taken, free of all burdens whatever, at the foreſaid two terms in the year, Whitſunday and Martinmas, by equal portions, beginning the firſt term's payment thereof at the firſt term of Whitſunday or Martinmas after his death, and ſo forth, termly thereafter, during her life, with one fifth more than each term's payment of penalty in caſe of failure, and annualrent thereof, from and after the ſaid terms of payment, until payment of the ſame, *furth* of *all* and *whole* (inſert the lands,) *or furth* of any part or portion thereof, readieſt rents, maills, farms, profits, and duties of the ſame; and that by two ſeveral infeftments and manners of holding therein mentioned, as the ſaid heritable bond of proviſion, containing procuratory of reſignation, clauſe of abſolute warrandice, aſſignation to the rents, maills,

and

and duties, writs and evidents of the ſaid lands, and precept of ſeiſine in itſelf, more fully bears. *Which* heritable bond of proviſion, the ſaid as procurator and attorney foreſaid, *exhibited* and *preſented* to the ſaid A. B. and required him, in conſequence and in implement thereof, *ex propriis ſuis manibus*, to give liferent ſtate and ſeiſine actual, real, and corporal poſſeſſion of the ſaid annuity, in terms thereof; *which* deſire, the ſaid A. B. finding reaſonable, he received the ſaid heritable bond of proviſion into his hands, and thereafter delivered the ſame to me notary public, to be read and publiſhed to the witneſſes then preſent and ſubſcribing; which I accordingly did; *and* immediately thereafter, the ſaid A. B. in conſequence and in implement thereof, *ex propriis ſuis manibus*, *gave* and *delivered* to the ſaid C. E. his ſpouſe, liferent ſtate and ſeiſine, actual, real, and corporal poſſeſſion, of *all* and *whole* the foreſaid liferent annuity of ——, to be uplifted, free of all public burdens, at the foreſaid two terms in the year, Whitſunday and Martinmas, by equal portions, beginning the firſt term's payment

Delivery to the ſuperior.

Requiſition to give ſeiſine.

Acceptance by him.

Delivery to the notary.

Publication by him.

Delivery of ſeiſine *propriis manibus.*

payment thereof at the firſt term of Whitſunday and Martinmas after his deceaſe, and ſo forth thereafter, during her life, with penalty and annualrent before mentioned, *furth* of *all* and *whole* the ſaid lands of —— with the pertinents of the ſame, lying as aforeſaid; or furth of any part or portion thereof, readieſt rents, maills, and duties of the ſame: *And* that by delivery to the ſaid attorney foreſaid, for, and in name of the ſaid C. E. of a little earth and ſtone of the ground of the ſaid lands, and a penny money, as uſe is; after the form and tenor of the ſaid bond of proviſion in all points. *Whereupon*, and upon all and ſundry the premiſes, the ſaid attorney foreſaid aſked and took inſtruments in the hands of me notary public ſubſcribing. *Theſe* things were ſo done, upon the ground of the ſaid lands, betwixt the hours of —— and —— —— noon, of the day of the month, year of God, and of his Majeſty's reign, firſt above written, *before*, and *in preſence* of and witneſſes to the premiſes, ſpecially called and required:

Attorney's taking of inſtruments.

Place,

hour,

Witneſſes.

red: *And*, in further verification of the premiſſes, the ſaid A. B. has ſigned theſe preſents, (written on this and the —— preceding pages of ſtamped vellum, by ——,) at the place and on the date foreſaid, and before the witneſſes above named and deſigned.

Then follows the notary's docquet, as in any other inſtrument of ſeiſine, in which the notary may likewiſe mention the number of pages, as required by the act of ſederunt.

Obſervations.

The foregoing inſtrument is, according to the common practice, where the granter of the right gives ſeiſine *propriis manibus*, in place of his bailie doing it upon the precept of ſeiſine, and may be uſed (*mutatis mutandis*) in any caſe where the granter can conveniently do it, by reſiding at the place where ſeiſine is given. The clauſe of ſubſcription by the party has poſſibly owed its riſe to this: A practice, it would appear, formerly, for ſome time prevailed, of giving ſeiſine to wives, children, or other conjunct perſons, *propriis manibus*, without any previous warrant for the ſeiſine: But it has been decided, that,

when ſuch ſeiſine is neither ſubſcribed by the granter, nor ſupported by a ſeparate warrant from him, it is null, being the bare aſſertion of a notary. But it would ſeem, that, if there is a previous warrant, the ſubſcription clauſe is ſuperfluous; and, if it is ſubſcribed by the party, that it is ſufficient, without a previous warrant: In which caſe, when a perſon is infeft in his own lands, he might, immediately thereafter, give ſeiſine to his wife of a certain part thereof, or of an annuity out of the ſame. The inſtrument in favour of the huſband in his lands would go on to '*whereupon*, and upon all and ſundry the 'premiſſes, the ſaid A. B. aſked and took 'inſtruments in the hands of me notary 'public ſubſcribing,' and, after inſerting 'thereof, it would add, '*and* being ſo infeft 'and ſeiſed, and immediately thereafter, 'the ſaid A. B. *propriis manibus*, *gave* and '*delivered* to C. E. his ſpouſe, liferent ſtate 'and ſeiſine, actual, real, and corporal poſ-'ſeſſion of,' &c. (inſert what the wife is to be liferented in), 'and that by deliverance 'to the ſaid C. E. perſonally preſent, of,' &c. (here inſert the ſymbol of delivery of ſeiſine,

—without a previous warrant.

ſeiſine, according to the caſe, and then ſay), 'whereupon the ſaid C. D. alſo took in-'ſtruments in the hands of me notary pu-'blic ſubſcribing, (and then go on), *Theſe* 'things, &c. *and* in further verification,' &c.

TITLE

TITLE VIII.

Of Legal Succeſſion in Heritage, and Deeds to take effect after the death of the Granter, or Deeds of Special Deſtination.

Origin of ſucceſſion.

IT has been formerly mentioned in what manner property was originally acquired, which may in general be expreſſed by the term *occupancy*. It has alſo been mentioned how it was parted with, or relinquiſhed, in favour of a purchaſer, during the life of the proprietor. It will occur, that, by the death of the proprietor, he likewiſe, of neceſſity, relinquiſhed the poſſeſſion:

ſeſſion: His own family, if they had got no previous grant from him, having the earlieſt intelligence of his death, had an opportunity of becoming the next occupants; and, if he was able to maintain poſſeſſion during his life, they would have little difficulty in continuing it after his death. A long uſage of this kind would introduce an idea of right in the heirs in theſe caſes, in preference to other perſons; hence the law of deſcents, or ſucceſſion, generally prevalent among mankind, probably derived its origin. To put it in the power of fathers, in many caſes, to be juſt, to make children dutiful, and to put an end to the harſh method of acquiſition by occupancy, the law gave the dying perſon a right to determine in what manner his property ſhould deſcend; or, in caſe of his neglecting ſo to do, declared who ſhould be the ſucceſſor. In what manner this has taken place in different nations, the genius of each particular people, their manner of life, the nature of their government, and a variety of other cauſes, may have had conſiderable effect in determining. On the introduction of the feudal ſyſtem, as a plan of

Effects of the feudal ſyſtem thereon.

of military policy, the lands (it has been formerly obſerved) were ſurrendered to the princes or great men, and received back after the nature of a gratuity, on condition of military ſervices. In the nations from which this ſyſtem was borrowed, the feudal grants were originally for a ſhort time, and afterwards only for life: But as the law of deſcents had probably been underſtood in this kingdom long prior to the introduction of this ſyſtem, the heir, if capable of military ſervices, was juſtly preferred to any other perſon as vaſſal; and, if in minority, was anciently in this kingdom entitled to ſend a ſubſtitute; and, even after the introduction of wardholding, in the form in which it long ſubſiſted in this kingdom, though the ſuperior was entitled to the rents during the heir's minority, to provide himſelf in a vaſſal, he was ſtill burdened with the aliment of the heir, if he had no ſeparate eſtate; and the heir, when he came of age, was entitled to a new grant, or acknowledgment of his right from the ſuperior, or to a ratification of any grant made by the predeceſſor in his favours. It is probable the laws of ſucceſ-

ſion

ſion were previous to this period, neither very determinate, nor very well obſerved in Scotland; at any rate, the power of the ſuperiors was ſufficient, in a great meaſure, to have altered them: Thus this, in conjunction with the right of primogeniture, which had probably then, in ſome degree, been obſerved, occaſioned the whole heritage to deſcend to the eldeſt of the children, if a male, the ſuperior being only entitled to one perſon's ſervice as repreſentative of the predeceſſor; and this ſervice capable only of being performed by a male. From this alſo it happened, that, in caſe of a total want of heirs or diſponees, the property went to the King, who was, on feudal principles, conſidered as the original proprietor of all the lands within his dominions; and this will account for many other things in our preſent laws of ſucceſſion.

Having premiſed ſo much, I now proceed to the laws of ſucceſſion in heritage, as preſently obſerved in Scotland.

Succeſſors are either ſingular, who ſucceed to (or rather acquire right from) a perſon yet alive in a ſpecial ſubject, by ſingular

Succeſſors ſingular and univerſal.

ſingular titles; *ex. gr.* diſpoſition, &c. or univerſal *jure ſanguinis*: But by ſucceſſion is generally underſtood the tranſmiſſion of property from the dead to the living, and which is either by legal ſucceſſion, or by ſpecial deſtination; and as the courſe of ſucceſſion pointed out by law is only that which, it is preſumed, the perſon deceaſed would have made, had he made a deſtination, and is calculated for ſupplying the want of ſuch deſtination, legal ſucceſſion muſt give way to it, when there is any deſtination.

Legal ſucceſſion, and ſucceſſion by ſpecial deſtination.

In the legal ſucceſſion of heritage, the heirs at law, otherwiſe called *heirs general*, heirs whatſoever, or heirs of line, ſucceed, by right of blood, in the following order: *Firſt*, Deſcendents, as children, grandchildren, &c. preferring the eldeſt ſon to the younger, and a ſon, though younger, to a daughter or daughters. Where there are daughters only, they ſucceed equally, and are called *heirs portioners*. Next after deſcendents, collaterals ſucceed; among whom the brothers-german of the deceaſed (*i. e.* brothers both by the father and mother), have the firſt place; where there are

Order of ſucceſſion in heritage; heirs at law.

Deſcendents.

Collaterals.

are more brothers than one, the immediate younger brother is heir, and where the deceaſed is the youngeſt, the immediate elder; then the ſiſters-german equally; then brothers conſanguinean (*i. e.* by the father only), in the ſame manner as brothers-german; and, failing them, ſiſters conſanguinean equally. Aſcendents next ſucceed, and of them the father in the firſt place; after him, his brothers and ſiſters, according to the above rules; then the grandfather, and failing him his brothers and ſiſters, and ſo upwards. But, although children ſucceed to their mother, a mother cannot to her child; on which account, there is no ſucceſſion by our law through the mother of the deceaſed, and one brother-uterine (*i. e.* by the mother only), cannot ſucceed to another, even in that eſtate which flowed originally from their common mother. In heritage, though not in moveables, there is a right of repreſentation, by which one ſucceeds, not from any title in himſelf, but in place of, and as repreſenting ſome of his deceaſed aſcendents. Thus, where one leaves a younger ſon, and a grandchild by his eldeſt, the

Aſcendents.

No ſucceſſion by the mother.

Right of repreſentation in heritage.

grandchild, though remoter by one degree, ſucceeds as coming in place of his father. The ſame holds with regard to females. Where one leaves a daughter alive, and two grand-daughters by a daughter deceaſed, the daughter has one half, and the two grand-daughters the other half betwixt them. A title of dignity, one ſingle right of ſuperiority or freehold, the principal ſeat of the family, garden, and orchyard, go to the eldeſt heir portioner as *a praecipuum.*

Succeſſion of heirs portioners.

Heir of conqueſt.

An *heir of conqueſt* is he who ſucceeds to ſuch heritage as the deceaſed acquired by other titles than by ſucceſſion. The diſtinction between an heir of line and of conqueſt, only happens when two or more brothers or uncles, or their iſſue, are next in ſucceſſion; in which caſe the immediate younger brother, as heir of line, ſucceeds to the heritage, but the conqueſt aſcends to the immediate elder brother. It is no longer, however, diſtinguiſhed as conqueſts, but deſcends afterwards to the repreſentatives of the heir of conqueſt as proper heritage; and it has no place among heirs

heirs portioners, nor where the deceaſed is the youngeſt himſelf.

Heirſhip moveables.

The heir of line is entitled to the ſucceſſion not only of ſubjects properly heritable, but to that ſort of moveables called *heirſhip*, which is the beſt of ſeveral kinds, taken notice of by act of parliament 1474, cap. 53 *. It is ſuppoſed to have been introduced that the heir might not have a houſe and eſtate to ſucceed to, quite diſmantled by the executor. Moveables are ſo various in their kinds, that it is not eaſy to give a liſt of theſe heirſhip moveables: But any perſon wiſhing for particular information on this head, may conſult *Spottiſwood's edition of Hope's Minor Practicks*. In that ſort which goes by pairs or dozens, the beſt pair or dozen is heirſhip; but in things eſtimated in quantity, as grain, hay, current money, &c. there is no heirſhip. To entitle the heir to this, the deceaſed muſt

* The act is in theſe words; 'Item, anent the air-'ſhip of moveable gudes, that the aires of baronnes, 'gentlemen, and freeholders ſall have; it is ſtatute and 'ordained that the ſaidis aires ſall have the beſt of 'ilka thing, and after the ſtatute of the burrow lawes, 'as is contained in the ſamen.'

muſt have been a baron, at leaſt infeft in lands, or other heritage, a prelate, or a burgeſs entitled to follow trade, or to enter burgeſs, and follow it in the right of his father. Neither the heir of conqueſt, nor of tailzie, has right to heirſhip moveables.

Lawful children; baſtards.

Children are either lawful, that is, born in lawful marriage, or natural. Such perſons only as are born in lawful marriage can ſucceed by right of blood: But they may be legitimated by the ſubſequent marriage of their parents, and ſucceed, if iſſue of no other marriage, nor any legal or conventional contract intervene; or, if the father have no lawful heirs, letters of legitimation may be obtained from the Sovereign. Neither can a baſtard have any legal heirs but thoſe of his own body, ſince there is no ſucceſſion but by the father; and a baſtard is held to have no certain father: But the King may, in letters of legitimation, renounce his right to the baſtard's ſucceſſion, failing his deſcendents, in favour of him who would otherwiſe have been his heir. A baſtard can, however, diſpoſe of his heritage in *liege pouſtie*,

(60

(60 days prior to his death), and of his moveables by any deed *inter vivos*, though not by teſtament.

When a perſon dies without any relations within the tenth degree of kindred, or as it is commonly laid down, who can prove propinquity to him, his lands fall to the King as laſt heir, as well as in the caſe of a perſon being born a baſtard, and dying ſo without iſſue. The reaſon of which (as before obſerved) is, that the lands, by the feudal law, are ſuppoſed to have been originally derived from him, and, for want of an heir to ſerve him as vaſſal, muſt revert to him, that he may therewith provide another vaſſal.

Perſon dying without relations.

A legal ſucceſſor, before he can have an active title to his anceſtor's rights, muſt be entered by ſervice and retour. He who is entitled to enter heir, is, before his actual entry, called *apparent heir*. The bare right of apparency carries certain privileges with it. An apparent heir may defend his anceſtor's titles againſt any third party who brings them under challenge. Tenants may ſafely pay him their rents; and, after they have once acknowledged him by payment,

Legal ſucceſſors muſt enter by ſervice and retour to have an active title.

Apparent heirs, their privileges.

payment, he may compel them to continue it. Upon the retour of the ſervice of an heir, if the lands hold of the crown, a precept is iſſued from the chancery for infefting the heir. Where the lands hold of a ſubject, he grants a precept for infefting the heir, termed a precept of *clare conſtat*, and this even on his own private knowledge, without the evidence of a retour, which the crown always requires; though it is more ſecure for the heir to be ſerved where the lands hold of a ſubject alſo.

Upon his retour obtains precept from the chancery for infefting him; if held of the crown; if of a ſubject, obtains precept of *clare conſtat*, even without ſervice.

Succeſſion, by ſpecial deſtination, is when it deſcends to the perſon named by the proprietor himſelf, in place of thoſe who would have otherwiſe been legal ſucceſſors; or, when he names one who might otherwiſe have been his ſucceſſor, but under certain burdens, proviſions, and declarations. Succeſſion, by ſpecial deſtination, is juſtly preferred to that by law, which only takes place in caſe of no ſpecial deſtination. A deed of ſpecial deſtination to have effect muſt be granted in *liege pouſtie*, otherwiſe it is reducible on the head of being granted on death-bed, from a jealouſy in the legiſlative power of the weakneſs

Succeſſion by ſpecial deſtination.

Reduction on the head of death-bed.

neſs of mankind under ſickneſs, and of the prevalence of importunity in that conjuncture. The action of reduction is competent to all ſorts of heirs. Going to kirk or market unſupported, is held to be ſufficient evidence of the convaleſcence of the granter, and of courſe ſufficient to prevent a reduction.

Having thus given an account of the different kinds of ſucceſſion, I ſhall now proceed to give an example of a deed of ſpecial deſtination, or deed to take effect after the death of the granter, in regard to the tranſmiſſion of his property; and, in doing this, I ſhall take the moſt ſimple form, and that uſed in the moſt common caſe, a diſpoſition to a perſon who would otherwiſe have been heir by the courſe of legal ſucceſſion.

Diſpoſition to a Son. *Diſpoſition to a ſon.*

I, A. B. of C. (*a*), *for* the love, favour, and affection, I have and bear to J. B. my only Granter. Conſideration.

Diſpoſitive. only lawful ſon(*b*), *do* hereby *give, grant, diſpone, convey*, and *make over* to, and in favour of the ſaid J. B. my ſon, his heirs or aſſignees whomſoever, heritably and irredeemably, *all* and *whole* (inſert the lands), together with all right, title, intereſt, claim of right, property, and poſſeſſion, which he, his predeceſſors or authors, heirs or ſucceſſors, had, have, or might have claim, or pretend thereto, or to any part or portion of the ſaid lands, and others above diſponed: *In* which lands and others before diſponed, I *bind* and *oblige* me, my heirs and ſucceſſors, to infeft and ſeiſe the ſaid J. B. and his foreſaids, by two ſeveral infeftments and manners of holding, the one thereof to be holden of me, and my foreſaids, in free blench, for payment of a penny Scots money, upon any part of the ground of the ſaid lands, at the term of Whitſunday yearly, in name of blench farm, if aſked allenarly, and freeing and relieving us of the duties and ſervices payable to our own ſuperiors thereof, and the other of the ſaid infeftments to be holden from us, of our immediate lawful ſuperiors, in the ſame manner, and as freely, in all reſpects, as I hold

Obligement to infeft.

Tenendas.

Reddendo.

hold, or may hold the ſame myſelf; and that either by reſignation or confirmation, or both, the one without prejudice of the other; *and* for obtaining the ſaid infeftment by reſignation, I hereby *make*, *conſtitute*, and *appoint* and each of them, jointly and ſeverally, my lawful procurators, for me, and in my name, *to reſign*, as I hereby *reſign*, *renounce*, *ſurrender*, *upgive*, and *overgive*, *all* and *whole* the lands and others before diſponed, lying and deſcribed as aforeſaid, and here held as repeated *brevitatis cauſa*, together with all right, title, or intereſt I have, or can pretend thereto, or to any part or portion thereof, *in the hands* of my immediate lawful ſuperiors of the ſame, or of their commiſſioners having power to receive reſignations, and grant new infeftments thereupon, *in favour*, and for new infeftment of the ſame, to be made and granted to the ſaid J. B. and his foreſaids, heritably and irredeemably, in due and competent form as effeirs; *acts*, inſtruments, and documents upon the premiſſes, to aſk and take, and generally every other thing requiſite and neceſſary thereanent to

Procuratory of reſignation.

do, as fully and freely, in all reſpects, as I might do if perſonally preſent, or which to the office of procuratory in ſuch caſes is known to pertain and belong; *promiſing* to hold firm and ſtable whatever my ſaid procurators ſhall lawfully do in the premiſſes. *And further*, I hereby *make*, *conſtitute*, and *ordain*, the ſaid J. B. his heirs and executors, my lawful ceſſioners and aſſignees, *not only in* and *to* the rents, mails, and duties of the ſaid ſubjects after my death, *but alſo in* and *to* the whole original writs, title-deeds, and ſecurities of, and concerning the ſubjects before diſponed, whole clauſes, and obligations therein contained, and all that has followed, or may follow thereon: *Surrogating* and *ſubſtituting* the ſaid J. B. my ſon, in my full right, title, and place of the premiſſes, with power to him, immediately after my death, to enter to poſſeſſion of the ſaid lands, intromit with, uplift, and purſue for the ſaid rents, diſcharge, and diſpoſe thereupon, and generally every other thing thereanent to do, that I could do while in life (*c*); *reſerving* always to myſelf the liferent of the whole ſubjects hereby diſponed, *with*

Aſſignation to the rents.

and writs.

Reſervation of the granter's liferent.

powe

power to alter or innovate theſe preſents, in whole or in part, as I ſhall ſee proper; *and declaring* that theſe preſents ſhall have the effect of a delivered evident, tho' found lying by me, or in the hands of any third perſon at the time of my death, whereanent I have diſpenſed, and diſpenſe for ever; *And I conſent* to the regiſtration hereof in the books of council and ſeſſion, or others competent, therein to remain for preſervation; and thereto conſtitute my procurators, *Attour*, to the end the ſaid J. B. may be more readily infeft and ſeiſed in the lands and others before diſponed, to be holden in manner above mentioned, I hereby *deſire* and *require* you and each of you, jointly and ſeverally, my bailies in that part, to the effect underwritten, ſpecially conſtitute, that, immediately upon ſight hereof, ye paſs to the ground of the ſaid lands, and there give and deliver to the ſaid J. B. heritable ſtate and ſeiſine, actual, real, and corporal poſſeſſion, of *all* and *whole* the lands and others above diſponed, and here held as repeated *brevitatis cauſa*; and that by delivery

—of power to alter.

Clauſe diſpenſing with the not delivery.

Regiſtration.

Precept of ſeiſine.

very to him, or his certain attorney, or attornies, in his name, bearers hereof, of earth and ſtone of the ground of the ſaid lands reſpectively, and all other ſymbols requiſite and neceſſary; and this in nowiſe ye leave undone; the which to do, I commit to you, and each of you, conjunctly and ſeverally, my bailies in that part foreſaid, my full power, by this my precept of ſeiſine, directed to you for that effect. *In witneſs*, &c.

Obſervations.

A diſpoſition to any other perſon will differ in nothing except the deſignation of the receiver.

Variation, 1. If burdened with proviſions to younger children.

If the foregoing diſpoſition is burdened with proviſions to younger children, it will be at letter (*b*), 'my eldeſt lawful ſon,' and immediately before the obligement to infeft, '*providing* always, as it is hereby 'ſpecially *provided* and *declared*, that the 'foreſaid lands, and others, are and ſhall 'be expreſsly burdened with, and that the 'ſaid J. B. and his foreſaids, are hereby 'ſpecially bound and obliged to make pay-'ment of the ſums of money after ſpeci-'fied, at the end of ſix months next after 'my deceaſe, viz. to my ſon G. B. his

'heirs

'heirs or aſſignees —— pounds Sterling; 'and to E. B. my daughter, her heirs or 'aſſignees, —— pounds Sterling; with the 'lawful intereſt of theſe ſums, from and 'after the aforeſaid term of payment, ſo 'long as the ſame may remain unpaid:' And in the procuratory and precept, 'but 'always with and under the proviſions 'and declarations above mentioned.'

—2. If having a wife provided in a liferent annuity, and bonds of proviſion granted to younger children.

Some times the diſponer has a wife provided in a liferent annuity, and has granted bond of proviſions to the younger children; in which caſe, the diſpoſition may go on as in the example given, except at letter (*b*), in place of 'only lawful ſon,' &c. ſay, 'eldeſt lawful ſon, *do* hereby, with 'and under the reſervations, burdens, and 'declarations after mentioned, *give*,' &c. to the word *reſerving*, only in the end of the procuratory, adding, 'with and under 'the reſervations, &c. above mentioned;' and then go on thus, '*reſerving* always to 'myſelf my own liferent right and uſe of 'the lands above diſponed, *and alſo* a life-'rent annuity of ——— money, payable 'to J. L. my ſpouſe, furth of the ſaid lands 'of C. during all the days of her life, con-

'form

'form to her infeftment therein; *and alſo* 'full power to me, in my lifetime, if I 'ſhould ſee cauſe, to ſell, wadſet, burden, 'or otherwiſe diſpoſe of all, or any part of 'the lands, and others, foreſaid, in the ſame 'manner as if theſe preſents had never been 'granted; *and providing* and *declaring* the 'ſaid lands, and others foreſaid, and my ſaid 'ſon, to ſtand burdened with the payment 'of ſuch proviſions as I have given, or may 'hereafter give, to my younger children, 'conform to bonds executed, or to be ex-'ecuted by me in their favours, for the 'ſame:' add alſo in the precept, 'with 'and under the reſervations, burdens, and 'declarations above mentioned.

2. If containing general diſpoſition, with the burden of payment of debts and proviſions to younger children, &c. and containing nomination of tutors and curators.

The foregoing diſpoſition ſometimes contains a *general diſpoſition* of *moveables*, and of debts, heritable and moveable, with the burden of proviſions to younger children and grand-children; and contains a nomination of tutors and curators to ſuch of the younger children, &c. as may be in pupillarity, or minority, at the death of the granter; in which caſe, at letter (*a*), add '*conſidering* that it is my duty ſo to 'order my affairs in my lifetime, as to pre-

'vent

'vent diſputes among my children and re-
'lations after my death, *therefore*, and
'for the love, favour, and affection I have
'and bear to J. B. my eldeſt lawful ſon,
'and to my other children and grand-
'child after mentioned, do hereby, with
'and under the reſervations, burdens, pro-
'viſions, and declarations after mentioned,
'*give*,' &c. and leave out what is betwixt
(*a*) and (*b*), and after adding 'with and
'under the reſervations, &c. after men-
'tioned,' in the procuratory of reſignation,
go on to letter (*c*), and ſay, '*and*, *more-*
'*over*, for the cauſes foreſaid, I hereby
'*diſpone*, *convey*, and *make over* to and in
'favours of the ſaid J. B. my ſon, all and
'ſundry goods, gear, corns, cattle, horſe,
'nolt, ſheep, houſehold furniture, inſtru-
'ments of labour, gold and ſilver, coined
'and uncoined, bank or bankers notes,
'debts, and ſums of money, heritable and
'moveable, and every other ſum or ſubject
'that may pertain or belong, be due or
'addebted to me, by whatſoever perſon or
'perſons, by bonds, bills, notes, accompts,
'accompt-books, or any other manner of
'way; with the grounds and inſtructions

General diſpoſition.

'of

'of the ſaid debts, and all that has follow-
'ed, or is competent to follow thereon:
'*ſurrogating* and *ſubſtituting* the ſaid J. B.
'my ſon, in my full right, title, and place
'of the premiſſes, with power to him, im-
'mediately after my death, to intromit
'with, uplift, purſue for, diſcharge and
'diſpoſe upon the premiſſes hereby diſ-
'poned and conveyed, and, generally, e-
'very thing thereanent to do, that I could
'do while in life; and, if needful, to give
'up inventory, and confirm himſelf execu-
'tor to me in virtue of theſe preſents: But
'declaring that any liſt or inventory of my
'moveable goods, gear, and effects, made
'out by me at any time in my life, and ſub-
'ſcribed, ſhall be taken and deemed a
'part hereof, and exclude the neceſſity of
'confirmation: *Provided* always, as it is
'hereby expreſsly *provided*, and declared,
'that theſe preſents are expreſsly burden-
'ed with the payment of all my juſt and
'lawful debts, deathbed expences, and fu-
'neral charges; *as alſo*, with the payment
'of the following proviſions to my chil-
'dren and grandchild after mentioned, at
'the periods after ſpecified, viz. to H. B.
'my

Clauſe burdening with payment of debts.

Proviſions to children, &c.

'my ſecond ſon, the ſum of L. 300 Ster-
'ling; to G. B. my third ſon, the ſum of
'L. 300 Sterling; to C. B. my eldeſt
'daughter, the ſum of L. 300 Sterling;
'and to E. B. my youngeſt daughter, the
'ſum of L. 300 Sterling; and, in caſe of
'the death of any of my ſaid four chil-
'dren before majority or marriage, the
'ſums ſo provided to them ſhall devolve
'upon the ſurvivers of my ſaid younger
'children equally; *as alſo*, to P. H. daugh-
'ter of the deceaſed S. B. my daughter,
'procreate betwixt her and W. H. in —
'her huſband, the ſum of L. 200 Sterling;
and it is hereby *declared* that the foreſaid
proviſions ſhall be payable, and the ſaid
J. B. binds and obliges himſelf to make
payment of the ſame to them as follows,
viz. to the ſaids H. and G. B. at the firſt
term of Whitſunday or Martinmas after
my deceaſe; and to the ſaids C. and E.
my daughters, and P. H. my grand-
daughter at their reſpective majorities or
marriages, which of the two ſhall firſt
happen, with annualrent from the firſt
term of Whitſunday or Martinmas after
my death, till payment; which provi-

'ſions my ſaid children accept of, in full
'of all they can claim by or through my
'deceaſe, or that of —— my ſpouſe, their
'mother, as legitim, portion natural,
'bairns part of gear, or any other manner
Nomination of tutors and curators. 'of way. *And* I hereby *nominate* and *ap-*
'*point* G. H. in K. and J. W. in R. or the
'ſurviver of them, to be tutors and cura-
'tors to my ſaid children and grandchild,
'or ſuch of them as ſhall be within the
'years of pupillarity and minority at the
'time of my death; *declaring* always, that
'the ſaid tutors and curators ſhall only be
'liable for their actual intromiſſions, and
'not for omiſſions or diligence, or for one
Reſervation of granter's liferent. 'another. *Reſerving always* to myſelf, the
'liferent of the whole ſubjects, debts, ſums
'of money, and others hereby diſponed;
—of power to alter. '*with power* to alter or innovate theſe
'preſents, in whole or in part, as I ſhall
Clauſe diſpenſing with the generality, and 'ſee proper; *and* I diſpenſe with the gene-
'rality hereof, as to the ſaid moveables;
'declaring the ſaid diſpoſition ſhall be e-
'qually effectual as if every ſum and ſub-
'ject hereby conveyed had been ſpecially
not delivery. 'inſert: *And declaring*, that theſe preſents
'ſhall have the effect of a delivered evi-
'dent

'dent, though lying by me, or in the hands 'of any third perſon, at the time of my 'death; whereanent I have alſo diſpenſed.' (*Regiſtration* and common *precept of ſeiſine*). 'But always with and under the reſerva-'tions, burdens, proviſions, and declara-'tions above mentioned.' (*Subſcription clauſe*).

Regiſtration. Precept of ſeiſine.

Diſpoſition to a Daughter, excluding her Huband's jus Mariti.

Diſpoſition to a daughter excluding her huſband's jus mariti.

It may be obſerved, that by marriage the huſband is conſtituted adminiſtrator of the goods in communion, during the marriage, and though the property of the wife's landed eſtate does not fall under this communion, yet the yearly produce thereof is ſubject thereto, and which right of adminiſtration is continued during the huſband's life, after the death of the wife, if there was a living child thereof, under the name of courteſy; but the huſband's right, or, as it is generally termed, *jus mariti*, is more ſimilar

Obſervations.

ſimilar to a conveyance than to a right of adminiſtration; for he may ſell or give away the goods in communion, and they are affectable by his debts, and the diligence of his creditors. It is now, however, an eſtabliſhed point, that a third perſon may ſettle an eſtate upon the wife not ſubject to the huſband's adminiſtration, or the diligence of his creditors: The form of which ſettlement or diſpoſition may be as follows:

Granter. Conſideration.

I, A. B. of C. for the love, favour, and affection, I have and bear to E. B. my daughter, ſpouſe to ſaid C. D. in ——, and for other goods and weighty cauſes and conſiderations moving me thereunto,

Diſpoſitive.

have given granted, and *diſponed*, and *do* hereby, with and under the proviſion and declaration after mentioned, *give*, *grant*, and *diſpone*, to and in favour of the ſaid E. B. in liferent, during all the days of her lifetime, and after her deceaſe, to J. D. her ſon; whom failing, to her own neareſt heirs or aſſignees whatſoever in fee, heritably and irredeemably, all and whole (inſert the lands), together with all right, &c.

Obligement to infeft.

In which lands, and others foreſaids, with th

the pertinents, I bind and oblige me, my heirs and ſucceſſors, duly, validly, and ſufficiently, to infeft and ſeiſe the ſaid E. B. in liferent, and the ſaid J. D. her ſon; whom failing, her heirs or aſſignees before mentioned in fee, by two ſeveral infeftments and manners of holding, &c. *And* for effectuating the ſaid infeftment by reſignation, I hereby *make* and *conſtitute*, &c. to *reſign*, &c. *in* the hands, &c. *in* favour, and for new infeftment thereof, to be made, given, and granted to the ſaid E. B. in liferent, and to the ſaid J. D. her ſon; whom failing, to her own neareſt heirs or aſſignees whatſoever in fee, in ſuch due and competent form as effeirs: *Providing* always, as it is hereby expreſsly *provided* and *declared*, and appointed to be inſerted in the infeftments to follow hereon, that the ſaid C. D. huſband of the ſaid E. B. ſhall have no concern with the ſaid lands, or the rents, maills, and duties thereof, on account of his *jus mariti*, the courteſy of Scotland, or any other manner of way whatever; and that the ſame ſhall not be liable to his debts or deeds, or ſubject to the diligence of his creditors: But that it

Tenendas.

Procuratory of reſignation.

Proviſion.

it ſhall be lawful to, and in the power of, the ſaid E. B. alone, without her huſband's conſent, to uplift and diſcharge the rents, maills, and duties, cuſtoms, and caſualties of the ſaid lands, and to apply the ſame as ſhe ſhall think proper, output and input tenants, and generally to do every other thing in relation thereto, in the ſame manner as if ſhe were a ſingle perſon. *Acts*, &c.

Aſſignation to the writs and rents.

And further, I hereby *make* and *conſtitute* the ſaid E. B. and the ſaid J. D.; whom failing, the ſaid E. B.'s foreſaids, for their reſpective rights of liferent and fee above mentioned, my lawful ceſſioners and aſſignees, *not only* in and to the whole writs and evidents, title-deeds, and ſecurities, of and concerning the ſaid ſubjects; *but alſo* in and to the rents, maills, and duties, cuſtoms, and caſualties of the ſaid lands, from and after the term of my deceaſe; *reſerving* to me my own liferent right of the foreſaid ſubjects; *and declaring* that this diſpoſition ſhall be a valid evident, although found in my cuſtody, or in that of any other perſon, undelivered to my ſaid daughter at the time of my death, any law or practice to the contrary notwith-

Reſervation of granter's liferent.

Clauſe diſpenſing with the not delivery.

withſtanding. (*Regiſtration for preſervation.*) *Attour*, to the effect the ſaid E. B. and the ſaid J. B. her ſon, and her foreſaids, may be more readily infeft and ſeiſed in the ſaid lands, I hereby deſire and require you, &c. that, on ſight hereof, ye paſs to the ground of the ſaid lands, and give and deliver to the ſaid E. B. liferent ſtate and ſeiſine, actual, real, and corporal poſſeſſion, of the ſaid lands and pertinents, during all the days of her life; and to the ſaid J. D. her ſon, whom failing, her heirs and aſſignees foreſaid in fee, heritable ſtate and ſeiſine, actual, real, and corporal poſſeſſion of the ſaid lands and pertinents; and that by delivery to them, or their certain attorney, or attornies, in their names, for their reſpective intereſts foreſaid, of earth and ſtone of the ground of the ſaid lands, and all other ſymbols uſual and neceſſary, to be holden in manner above mentioned; and this in nowiſe ye leave undone, &c.

Regiſtration. Precept of ſeiſine.

General

General diſpoſition including diſpoſition and aſſignation.

General Diſpoſition, including Diſpoſition and Aſſignation to a Diſpoſition of a particular ſubject, and Aſſignation to the unexecute Procuratory of Reſignation, and Precept of Seiſine therein contained.

Granter.

Conſideration.

I, A. B. in C. *for* the love, favour, and affection, I have and bear to C. B. in —— my nephew, and for other weighty cauſes and conſiderations, me hereunto moving, *do*, by theſe preſents, with and under the reſervations, burdens, and declarations underwritten, *give*, *grant*, *diſpone*, *aſſign*, and *make over*, to and in favour of the ſaid C. B. his heirs, executors, and ſucceſſors whatſoever, all and ſundry goods, gear, debts, ſums of money, houſehold-pleniſhing, corns, cattle, and whole other moveable goods and gear, of whatever kind and denomination the ſame be, that ſhall be pertaining and belonging, or due and addebted to me at the time of my death, by whatſoever perſon or perſons, by bonds, bills,

General diſpoſition.

bills, decreets, accounts, promiſſory-notes, or any other manner of way whatever, together with the grounds and inſtructions of the ſaid debts, and all that has followed, or may follow thereon; and, in like manner, all and ſundry lands, heritages, tenements, tacks, and whole other heritable ſubjects, pertaining and belonging, or that ſhall be pertaining and belong to me at the time of my death; *and particularly*, without prejudice to the generality foreſaid, *all* and *whole* (take in the ſubject), with the whole rights, title-deeds, and ſecurities of the ſaid ſubject, procuratories of reſignation, precept of ſeiſine, and whole other clauſes therein contained; with power to him to obtain himſelf infeft and ſeiſed in the ſaid ſubject, in virtue of the procuratory of reſignation, and precept of ſeiſine contained in a diſpoſition thereof, by ——— to me, dated ——, or either of them; *reſerving* always to me my liferent right and uſe of the ſubjects above diſponed, during all the days of my lifetime, *and* full power of faculty and liberty to alter theſe preſents, in whole or in part, as I ſhall think proper, *with* the burden of all

Diſpoſitive of particular ſubject.

Power to infeft.

Reſervation of liferent.

—of power to alter.

Clauſe burdening with payment of debts.

my juſt and lawful debts, death-bed expences, and funeral charges: *Surrogating* and *ſubſtituting* the ſaid C. B. and his foreſaids, in my full right and place of the premiſſes; with power to him, immediately after my death, to intromit with the ſubjects hereby conveyed, receipts, diſcharges, and conveyances to grant, which ſhall be ſufficient to the receivers, and generally every other thing to do which I could have done myſelf while in life; *diſpenſing* with the generality hereof, and admitting and declaring theſe preſents, if found lying by me, or in the hands of any other perſon, at the time of my death, to be equally good, valid, and ſufficient, as if delivered by me in my lifetime, whereanent I have diſpenſed, and hereby diſpenſe for ever: *And conſenting* to the regiſtration, &c. (for preſervation; ſubſcription clauſe.)

Clauſe diſpenſing with the generality and not delivery.

Regiſtration. Subſcription.

Heritable bonds of proviſion to youn ger children.

The younger children are ſometimes provided by heritable bonds of proviſion, which have in them nothing particular, except in the perſonal obligation, which goes on thus: 'I, A. B. of C. for the love, 'favour, and affection, I have and bear to

'—— my

'—— my lawful ſon, bind and oblige 'me, my heirs, &c. to content and pay to 'the ſaid —— his heirs, &c. the ſum of '—— money, and that at and againſt,' '&c. (take in the term of payment), and is, in every other reſpect, ſimilar to another heritable bond.

Inſtrument of Seiſine upon the foregoing Diſpoſitions.

—upon diſpoſition to a ſon.

Inſtrument of Seiſine upon the example of a diſpoſition to a ſon, proceeds on the following narrative:

Narrative.

Having, and in his hands *holding*, a diſpoſition, dated ——, made and granted by A. B. of C. whereby (for the cauſes therein ſpecified), he *gave*, *granted*, *diſponed*, *conveyed*, and *made over*, to and in favour of the ſaid J. B. his heirs or aſſignees whomſoever, heritably and irredeemably, *all* and *whole* (inſert the lands as in the diſpoſition), together with all right, title, intereſt, claim of right, property, and poſſeſſion,

poſſeſſion, which he, his predeceſſors, or authors, heirs, or ſucceſſors, had, have, or might have, claim, or pretend thereto, or to any part or portion of the ſaid lands or others, above diſponed (*a*); as the ſaid diſpoſition, containing obligement to infeft, by two ſeveral infeftments and manners of holding, procuratory of reſignation, aſſignation to the rents, mails, and duties, and writs and evidents, the precept of ſeiſine after inſert, and ſeveral other clauſes, more fully bears, &c.

As ſeiſine is not commonly taken on this diſpoſition during the life of the granter, it is unneceſſary to take any notice of the liferent reſervation, unleſs where it makes part of a clauſe neceſſary to be inſerted, and may, in that caſe, come in for the ſake of congruity.

—if variation 1ſt in the diſpoſition.

If *variation firſt* is made in the diſpoſition, it will be narrated at letter (*a*) thus: 'Providing always, as it is thereby ſpecially *provided* and *declared*, that the aforeſaid lands and others, are, and ſhall be expreſsly burdened with, and that the ſaid J. B. and his foreſaids, are thereby ſpecially bound and obliged to make payments

'ment of the ſums of money after ſpeci-
'fied, at the end of ſix months next after
'his deceaſe, viz. to his ſon, G. B. his heirs
'or aſſignees, ——— pounds Sterling, and
'to E. B. his daughter, her heirs, or aſſig-
'nees, ——— pounds Sterling; with the
'lawful intereſt of theſe ſums, from and
'after the foreſaid term of payment, ſo
'long as the ſame might remain unpaid.'

If Variation Second. —if variation 2d.

'*Having*, &c. a diſpoſition, dated ——, Narrative.
'made and granted by A. B. of C. where-
'by (for the cauſes therein ſpecified), and
'with and under the reſervations, burdens,
'and declarations, therein and after men-
'tioned, the ſaid A. B. *gave*,' &c. to letter (*a*), then ſay, '*Reſerving* always to
'himſelf, his own liferent right and uſe of
'the lands therein diſponed, and alſo a
'liferent annuity of ——— money, pay-
'able to J. L. his ſpouſe furth of the ſaid
'lands of C. during all the days of her
'life, conform to her infeftment therein;

'*and*

poſſeſſion, which he, his predeceſſors, or authors, heirs, or ſucceſſors, had, have, or might have, claim, or pretend thereto, or to any part or portion of the ſaid lands or others, above diſponed (*a*); as the ſaid diſpoſition, containing obligement to infeft, by two ſeveral infeftments and manners of holding, procuratory of reſignation, aſſignation to the rents, maills, and duties, and writs and evidents, the precept of ſeiſine after inſert, and ſeveral other clauſes, more fully bears, &c.

As ſeiſine is not commonly taken on this diſpoſition during the life of the granter, it is unneceſſary to take any notice of the liferent reſervation, unleſs where it makes part of a clauſe neceſſary to be inſerted, and may, in that caſe, come in for the ſake of congruity.

—if variation 1ſt in the diſpoſition.

If *variation firſt* is made in the diſpoſition, it will be narrated at letter (*a*) thus: 'Providing always, as it is thereby ſpeci-'ally *provided* and *declared*, that the afore-'ſaid lands and others, are, and ſhall be 'expreſsly burdened with, and that the ſaid 'J. B. and his foreſaids, are thereby ſpe-'cially bound and obliged to make pay-

'men

'ment of the ſums of money after ſpeci-
'fied, at the end of ſix months next after
'his deceaſe, viz. to his ſon, G. B. his heirs
'or aſſignees, ——— pounds Sterling, and
'to E. B. his daughter, her heirs, or aſſig-
'nees, ——— pounds Sterling; with the
'lawful intereſt of theſe ſums, from and
'after the foreſaid term of payment, ſo
'long as the ſame might remain unpaid.'

If Variation Second. —if variation 2d.

'*Having*, &c. a diſpoſition, dated ——, Narrative.
'made and granted by A. B. of C. where-
'by (for the cauſes therein ſpecified), and
'with and under the reſervations, burdens,
'and declarations, therein and after men-
'tioned, the ſaid A. B. *gave*,' &c. to
letter (*a*), then ſay, '*Reſerving* always to
'himſelf, his own liferent right and uſe of
'the lands therein diſponed, and alſo a
'liferent annuity of ——— money, pay-
'able to J. L. his ſpouſe furth of the ſaid
'lands of C. during all the days of her
'life, conform to her infeftment therein;

'*and*

'*and alſo* full power to him in his lifetime, 'if he ſhould ſee cauſe to ſell, wadſet, 'burden, or otherwiſe diſpoſe of, all or 'any part of the lands, and others fore-'ſaid, in the ſame manner as if the ſaid 'diſpoſition had never been granted; and '*providing* and *declaring* the ſaid lands 'and others foreſaid, and his ſaid ſon, to 'ſtand burdened with the payment of ſuch 'proviſions as he had given, or might 'thereafter give, to his younger children, 'conform to bonds executed, or to be exe-'cuted, by him in their favours for the 'ſame;' as the ſaid diſpoſition, &c. *deli-very of ſeiſine*, in terms of the *precept*; 'but always with and under the reſerva-'tions, burdens, and declarations above 'mentioned.'

—if with variation 3d.

If with Variation Third.

'*Having*, &c. whereby (for the cauſes 'therein ſpecified), and with and under

'reſerva-

'reſervations, burdens, proviſions, and de-
'clarations therein and after mentioned,
'the ſaid A. B. *gave*,' &c. to letter (*a*),
then ſay, 'Provided always, as it is there-
'by expreſsly *provided* and *declared*, that
'the ſaid diſpoſition is expreſsly burdened
'with the payment of all the ſaid A. B.'s
'juſt and lawful debts, death-bed expen-
'ces, and funeral charges; *as alſo* with the
'payment of the following proviſions to
'his children and grandchildren after men-
'tioned, at the periods after ſpecified, viz.
'to H. B. his ſecond ſon, the ſum of
'L. 300 Sterling; to G. B. his third ſon,
'the ſum of L. 300 Sterling; to C. B. his
'eldeſt daughter, the ſum of L. 300 Ster-
'ling; and to E. B. his youngeſt daugh-
'ter, the ſum of L. 300 Sterling; and, in
'caſe of the death of any of his ſaid four
'children before majority or marriage, the
'ſums ſo provided to them ſhould devolve
'upon the ſurvivers of the ſaid younger
'children equally; as alſo to P. H. daugh-
'ter of the deceaſed S. B. his daughter,
'procreate betwixt her and W. H. in ——
'her huſband, the ſum of L. 200 Sterling:

'*And*

'*And* it is thereby *declared*, that the fore-
'ſaid proviſions ſhould be payable, and the
'ſaid J. B. bound and obliged himſelf to
'make payment of the ſame to them as
'follows, viz. to the ſaid H. and G. B. at
'the firſt term of Whitſunday or Martin-
'mas after the ſaid A. B.'s deceaſe, and to
'the ſaids C. and E. his daughters, and P.
'H. his grand-daughter, at their reſpective
'majorities or marriages, which of the two
'ſhould firſt happen; with annualrent
'from the firſt term of Whitſunday or
'Martinmas after his death till payment
'which proviſions his ſaid children accept
'of in full of all they can claim by or
'through his deceaſe, or that of —— his
'ſpouſe, their mother, as legitim, portion
'natural, bairns part of gear, or any other
'manner of way; as the ſaid diſpoſition,
&c. (as in the firſt example; *delivery of*
ſeiſine, in terms of the precept;) 'but al-
'ways with and under the reſervations
&c.

Obſervation. It may here be obſerved, that the claus
burdening the lands with payment of th
granter's debts, in a general manner, wi
no

not make them real burdens upon the eſtate, if the creditors in the burden are not particularly mentioned; for no perpetual unknown incumbrance can be created upon lands.

Inſtrument of Seiſine upon a Diſpoſition to a Daughter, excluſive of her Huſband's jus mariti.

—*upon a diſpoſition to a daughter, excluding the huſband's* jus mariti.

Having, &c. a diſpoſition, dated —— made and granted by A. B. of C. whereby (for the cauſes therein ſpecified), with and under the proviſion and declaration thereafter and after mentioned, he *gave*, *granted*, and *diſponed*, to and in favour of the ſaid A. B. in liferent, during all the days of her lifetime, and, after her deceaſe, to J. D. her ſon; whom failing, to her own neareſt heirs or aſſignees whatſoever in fee, heritably and irredeemably, *all* and *whole*, &c. together with all right, &c. *providing* Narrative.

always, as it is thereby expreſsly *provided* and *declared*, and appointed to be inſert in the infeftments to follow thereon, that the ſaid C. D. ſhould have no concern with the ſaid lands, or the rents, maills, and duties, cuſtoms, and caſualties thereof, on account of his *jus mariti*, the courteſy of Scotland, or any other manner of way whatever; and that the ſame ſhould not be liable to his debts or deeds, or ſubject to the diligence of his creditors, but that it ſhould be lawful to, and in the power of the ſaid E. B. alone, without her huſband's conſent, to uplift the rents, maills, and duties, cuſtoms, and caſualties, of the ſaid lands, and to apply the ſame as ſhe ſhould think proper, output and input tenants, and generally to do every other thing in relation thereto, in the ſame manner as if ſhe were a ſingle perſon; as the ſaid diſpoſition, containing obligement to infeft, by two ſeveral infeftments and manners of holding, procuratory of reſignation, aſſignation to the writs and evidents, rents, maills, and duties, the precept of ſeiſine after inſert, and ſeveral other clauſes, in itſelf

itſelf more fully bears, &c. (*Delivery of ſeiſine*, in terms of the *precept*.)

—*upon diſpoſition and general diſpoſition, containing diſpoſition and aſſignation.*

Inſtrument of ſeiſine upon a *diſpoſition*, and the foregoing *general diſpoſition*, containing *diſpoſition* and *aſſignation* thereto, and to the unexecute procuratory of reſignation, and precept therein contained, narrates the original diſpoſition to the ſubject, the precept whereof remains unexecute, and then goes on,

Additional narrative.

'*As alſo having*, and in his hands *holding*, a general diſpoſition, containing 'diſpoſition and aſſignation to the ſaid 'lands, and diſpoſition thereof above nar-'rated, dated ——, made and granted by 'the ſaid A. B. to and in favours of the 'ſaid J. B. whereby (for the cauſes there-'in ſpecified), the ſaid A. B. *inter alia*, '*gave, granted, diſponed, aſſigned*, and *made over*, to and in favours of the ſaid J. B. 'his heirs and aſſignees whatſoever, *all* and '*whole* the ſaid (repeat the lands), *with* 'the whole rights, title-deeds, and ſecuri-'ties of the ſaid lands, procuratories of re-'ſignation, precepts of ſeiſine, and whole 'other clauſes therein contained; *with*

'*power*

'*power* to him to obtain himſelf infeft and 'ſeiſed in the ſaid lands, in virtue of the 'procuratory of reſignation, and precept 'of ſeiſine contained in the ſaid diſpoſi-'tion thereof by the ſaid —— to the ſaid 'A. B. or either of them; as the ſaid diſ-'poſition and aſſignation, containing ſeve-'ral other clauſes, alſo more fully bears,' &c.

TITLE

TITLE IX.

Tailzies, or Deeds of Entail, &c.

WHEN a deed of ſpecial deſtination is made in favour of a long ſeries of heirs, they may be termed heirs of tailzie: Heirs pointed out by contracts of marriage are more properly termed heirs of proviſion; though it is common to execute a tailzie in a contract of marriage, and the term heir of tailzie and proviſion is frequently applied to heirs of tailzie, in whatever manner the tailzie has been executed. The perſon firſt called in the tailzie is the inſtitute, and the reſt, the heirs of

Heirs of tailzie.

—of proviſion.

of tailzie, or the ſubſtitutes. Tailzies are frequently made in favour of the heir-male, *i. e.* of the neareſt legal heir to the granter, who is himſelf a male, and whoſe propinquity is wholly connected by males, without the intervention of any female. Where lands are provided in a marriage-contract to the heir-male, and, in default of him, to the heirs-female to be procreated of the marriage, the appellation of heirs-female, which is a known legal term, denoting the heirs at law after the failure of the lineal male iſſue, muſt be ſo underſtood as to prefer the daughter of a ſon of the marriage, to the eldeſt immediate daughter; becauſe the immediate daughter is not, in ſuch caſe, the heir at law; yet, as all entails ought to be governed by the will of the maker, when clearly expreſſed; therefore, if it ſhall appear plain from other expreſſions in the deed, that he did not, by that deſcription, mean an heir-female in the proper ſenſe, the certain intention of the maker ought to prevail againſt the legal meaning of the term.

Heir-male.

Heirs-female.

Tailzies are either, 1. ſimple deſtinations, where the perſons called to the ſucceſſion are

Simple deſtina-

are ſubſtituted, one after another, without any conſtraint laid on the exerciſe of their property. The heirs, therefore, are abſolute fiars, and conſequently may alter the deſtination, or ſell the ſubject at pleaſure, and the ſubſtitutes have only the hope of ſucceſſion. 2. Tailzies, with prohibitory clauſes, (*i. e.* clauſes declaring that it ſhall not be lawful to the heirs to alter the ſucceſſion); and in theſe none of the heirs can alienate gratuitouſly. 3. Tailzies with prohibitory, reſolutive, and irritant clauſes; theſe laſt to the prohibitory clauſe adject a clauſe, whereby it is provided and declared, that the tailzied eſtate ſhall not be carried off by the debts or deeds of any of the heirs ſucceeding thereto, in prejudice of the ſubſtitutes, and whereby ſuch debts and deeds are declared *null*; and, the better to carry this reſolutive clauſe into execution, an irritant clauſe is adjected, whereby the fiar, by contracting debt, or doing any deed contrary to the terms of the tailzie, amits and loſes his right, as if naturally dead. Where there has been a former tailzie in a contract of marriage, the heir of the marriage is not obliged to take the eſtate under an

tion lays no reſtraint on the heir.

—with prohibitory clauſes.

Heirs cannot alienate gratuitouſly.

—with irritant and reſolutive clauſes.

an entail, in terms more ſtrict than thoſe of the contract of marriage, unleſs he conſent thereto himſelf. The tailzied eſtate, though not ſubject to the debts of the heirs of tailzie, is ſubject to thoſe of the tailzier.

Their requiſites.

As theſe tailzies bore hard upon creditors, there was a ſpecial regiſter appointed by act of parliament 1685, c. 22. wherein tailzies, or deeds of entail, muſt be regiſtered; and the irritant and reſolutive clauſes muſt be inſerted, not only in the right and ſeiſine by which the tailzie is firſt conſtituted, but in all the after conveyances and rights thereof; otherwiſe they can have no effect againſt ſingular ſucceſſors *.

Conveyance by heir of entail ſufficient title for enrolment.

A conveyance by an heir of entail, however ſtrictly fettered, is a ſufficient title for enrolment as a freeholder, as it is good againſt every mortal but the ſubſtitutes; and it is *jus tertii* to any perſon to plead in their right. The court of ſeſſion have accordingly ſuſtained ſuch titles produced for the claimants, and ordered them to be added

* A gentleman has lately favoured the public by publiſhing an alphabetical index to the regiſter of tailzies, whereby any tailzie in Scotland, executed prior thereto, may be readily found.

ded to the roll; *Feb.* 5. 1760. *Campbell of Shawfield* and *Graham of Gartmore*, contra *Muir of Caldwall*; and this, even though the author is expreſsly barred from granting liferent rights; *Jan.* 23. 1781, *Houſton* contra *Ferrier*. It is, however, raſh and dangerous for heirs of entail to grant ſuch conveyances, and thereby expoſe themſelves to the hazard of declarators of irritancy, at the inſtance of ſubſtitutes, even the moſt remote. Liferent rights are moſt commonly granted for this purpoſe; truſting to the liferenter's honour in renouncing, in the event of a challenge being made by any of the ſubſtitutes. The feu-rights may declare their own purpoſe *in gremio*. Heirs of entail may ſell ſuperiorities to the vaſſals in the lands; *20th Geo.* II. c. 50.

Heirs of entail may ſell ſuperiorities to their vaſſals.

Heir of entail may obtain an act of parliament, transferring or exchanging the tailzie from one eſtate to another.

—may obtain transference of the tailzie.

By act 10th Geo. III. c. 51. an heir of entail, laying out money in building a manſion-houſe, &c. ſhall be creditor to the next heir of entail for three-fourths of the money expended, if not exceeding two

—may burden the eſtate with 2-3ds of the building a manſion houſe, and with part of improvements.

years free rent. He is alſo entitled to make certain improvements on the eſtate.

Having, under the title of Contracts of Marriage, taken notice of the method of inſerting a tailzie therein, containing a ſubſtitution and a prohibitory clauſe, I ſhall now give an example of a deed of entail by itſelf, with prohibitory, reſolutive, and irritant clauſes; from which two examples, it is hoped, any form of a tailzie may be made out.—*See* alſo a tailzie narrated in a *charter of confirmation*, and *precept of clare conſtat*, in *title* on *Charters by Progreſs*.

Deed of Entail.

Granter. Conſideration. Diſpoſitive.

I, A. B. of C. *for* the better preſervation of my family, and continuance of my eſtate with my children, and heirs of tailzie after mentioned, *do* hereby, with and under the conditions, limitations, clauſes irritant and reſolutive, proviſions, declarations, and reſervations after-written, with conſent of C.

C. B. my eldeſt lawful ſon, *give*, *grant*, and *diſpone* to the ſaid C. B. and the heirs-male lawfully procreated, or to be procreated of his body in fee; whom failing, to my other heirs of tailzie after mentioned, heritably and irredeemably, *all* and *whole* (inſert the lands), together with all right, title, and intereſt, which I have, or can pretend to the lands, teinds thereof, or others before ſpecified, or to any part or portion thereof, and pertinents of the ſame; but with and under the conditions, limitations, clauſes irritant and reſolutive, proviſions, reſervations, and declarations underwritten: *And* I *bind* and *oblige* me, my heirs and ſucceſſors, to infeft and ſeiſe the ſaid C. B. and his foreſaids, in fee; whom failing, my other heirs of tailzie after ſpecified, in the lands and others before diſponed, by two ſeveral infeftments and manners of holding, one thereof to be holden of and under me, in free blench, for payment of a penny Scots money upon any part of the ground of the ſaid lands, at the term of Whitſunday yearly, in name of blench farm, if aſked allenarly, and freeing and relieving me, and my other heirs,

Obligement to infeft. Tenendas.

heirs, of the duties and ſervices payable to our own ſuperiors; and the other of the ſaid infeftments to be holden from us, of our immediate lawful ſuperiors, in the ſame manner, and as freely, in all reſpects, as I hold, or may hold the ſame myſelf; and that either by reſignation, or confirmation, or both, or either of the ſaid infeftments, the one without prejudice of the other; but always with, and under the conditions, limitations, clauſes irritant and reſolutive, proviſions, reſervations, and declarations after written: *And*, for that effect, I bind and oblige me, and my foreſaids, to make and grant procuratories of reſignation, and all other writs neceſſary: *And* for obtaining the ſaid infeftment by reſignation, *I* hereby *conſtitute* and *appoint*

Procuratory of reſignation.

and each of them, jointly and ſeverally, my lawful procurators and attornies, with full power, warrant, and commiſſion, for me, and in my name and behalf, duly and lawfully, to *reſign*, as I hereby *reſign*, *ſurrender*, and *overgive*, *all* and *whole* the lands, teinds, and others before diſponed, lying and deſcribed as aforeſaid, and here held as repeated *brevi-*

tatis

latis cauſa; together with all right, title, and intereſt, I have, or can pretend thereto, or to any part or portion thereof, *in the* hands of my immediate lawful ſuperiors of the ſame, or of their commiſſioners, in their names, or of any others having right and power for the time to receive reſignations thereof, and grant new infeftments thereupon; *in favour*, and for new infeftment of the ſame, to be made and granted to the ſaid *C. B.* and the heirs-male of his body; whom failing, to the heirs-female procreated or to be procreated of the marriage betwixt him and Mrs C. E. his preſent ſpouſe, eldeſt daughter of R. E. Eſq; of —— and the heirs whatſoever of their bodies; whom failing, to D. B. my ſecond ſon, and the heirs-male of his body; whom failing, to F. B. my third ſon, and the heirs-male of his body; whom failing, to any other heirs-male of my own body; whom failing, to the heirs whatſoever of the body of the ſaid C. B. in any ſubſequent marriage; whom failing, to the heirs whatſoever of the body of the ſaid D. B.; whom failing, to the heirs whatſoever of the body of the ſaid F. B.; whom failing,

Inſtitute. Subſtitutes.

failing, to Miſs E. B. my eldeſt daughter, and the heirs whatſoever of her body; whom failing, to Miſs J. B. my youngeſt daughter, and the heirs whatſoever of her body; whom all failing, to the ſaid C. B. his heirs and aſſignees whatſoever, the eldeſt heir-female and the deſcendents of her body, ſo oft as the ſucceſſion ſhall devolve upon females and their deſcendents, excluding all other heirs-portioners, and ſucceeding always without diviſion, throughout the whole courſe of ſucceſſion of the ſaid heirs of tailzie above ſpecified, heritably and irredeemably, in due and competent form as effeirs; *but* with and under the conditions, limitations, clauſes irritant and reſolutive, proviſions, reſervations, and declarations under-written, viz. *with* and *under* the *condition* always, as it is hereby expreſsly *provided*, that the ſaid C. B. and whole heirs of tailzie above mentioned, ſhall be obliged conſtantly to uſe, bear, and retain the ſurname of B. and arms and deſignation of B. of C. in ſo far as they ſhall be allowed by the rules of law and heraldry, in all time after their ſucceſſion, or attaining poſſeſſion of the foreſaid eſtate;

and

and the heir-female ſo ſucceeding ſhall be obliged to marry a gentleman of the name of B. or one who, and the deſcendents of his body ſucceeding to the ſaid eſtate, ſhall aſſume, bear, and conſtantly uſe the ſaid ſurname and arms; *and with* and *under* this condition alſo, that the ſaid C. B. and heirs of tailzie, ſhall be holden and obliged to record the preſent deed of entail in the regiſter of tailzies, as alſo in the books of council and ſeſſion, in caſe the ſame ſhall not have been done by myſelf, and that within year and day after my deceaſe, in caſe ſuch heir ſhall have attained the age of majority, and be within the kingdom of Great Britain at the time; and in caſe of being in minority, or furth of Great Britain, then within year and day of his or their attaining the age of majority, or coming to Great Britain reſpectively; without prejudice, nevertheleſs, to any other of the heirs of entail, to apply for recording the ſame ſooner, in caſe they ſhall think proper: *As alſo with* and *under* this *condition*, as it is hereby ſpecially provided, that the ſaid C. B. and my ſaid whole heirs of tailzie above ſpecified, ſhall take and poſſeſs

Condition 3d. To poſſeſs only upon the tailzie.

poſſeſs the lands and eſtate above written upon this tailzie only, and upon no other right or title whatever; and that they ſhall uſe any other right that they may happen to have or acquire, as additional or collateral titles thereto, for ſupporting this deed of entail only, and for no other purpoſe whatever; *and with* and *under* this *condition* alſo, that the ſaid C. B. and the ſaid whole heirs of tailzie, ſhall be obliged to cauſe ingroſs, and *verbatim* inſert, the whole foreſaid courſe and order of ſucceſſion, at leaſt ſo far as ſhall be ſubſequent to the heir in poſſeſſion at the time, with the ſeveral conditions, limitations, clauſes irritant and reſolutive, and others contained in the preſent procuratory of reſignation, in the charters and infeftments to follow hereon, and in all after charters, ſpecial retours, and inſtruments of ſeiſine of the lands and others above ſpecified, or any part thereof; excepting always the condition with reſpect to recording the entail, which they ſhall not be obliged to repeat after the entail is once duly recorded; *and with* and *under* the limitations and reſtrictions underwritten, viz. *with* and *under*

Condition 4th. To inſert the courſe of ſucceſſion in the inveſtiture.

Limitation 1ſt. Not to alter the courſe of ſucceſſion.

der this limitation and reſtriction, that it ſhall nowiſe be lawful to, nor in the power of, the ſaid C. B. or any other of my ſaid heirs of tailzie, or ſubſtitutes above written, any way to alter, innovate, or infringe the preſent deed of entail, or the order of ſucceſſion hereby eſtabliſhed, or to do or grant any other fact or deed that may infer any alteration, innovation, or change of the ſame, directly or indirectly; *but* with this *exception* always, that in caſe any apparent or preſumptive heir, or other ſubſtitute, who may at any time ſucceed to the ſaid lands and eſtate, in virtue of the above deſtination, ſhall by law be incapable of ſucceeding to the ſame, by reaſon of forfeiture or attainder, or any other legal incapacity, which may exclude any ſuch apparent or preſumptive heir, or other ſubſtitute, from taking, holding, and enjoying, for their own uſe and benefit, the ſaid lands and eſtate, in virtue of the ſubſtitution above written; *then*, and *in that caſe*, it ſhall be lawful to any of the ſaid heirs of entail, who ſhall be in the right of the ſaid lands for the time, as oft as ſuch caſe ſhall happen, in all time to

Exception, in caſe the apparent heir be attainted.

come, ſo far to alter the ſaid deſtination as to exclude ſuch incapable perſon or perſons from the right of ſucceeding to the foreſaid lands and eſtate, notwithſtanding the foreſaid reſtriction; and, for that end, to grant ſuch deed or deeds, for excluding the foreſaid incapable perſon or perſons, as an unlimited proprietor might do; *providing* nevertheleſs, that, with reſpect to the other heirs of tailzie, the prohibition to alter the courſe of ſucceſſion ſhall have its full force and effect; *and with* and *under* this *limitation* and *reſtriction* alſo, that it ſhall not be lawful to, nor in the power of, the ſaid C. B. or the ſaid heirs of entail or any of them, to ſell, diſpone, alienate, burden, dilapidate, or put away, the lands and eſtate above diſponed, or any part thereof, either irredeemably or under reverſion, or to contract debts, grant bonds or any other writs, deeds, or ſecurities, or do any other act, civil or criminal, that ſhall be the ground of any adjudication, eviction, or forfeiture of the foreſaid lands and eſtate, or any part thereof, or any ways to affect or burden the ſame; nor ſhall the ſaid lands and eſtate, or any part thereof

Limitation 2d. Not to ſell, or contract debt.

thereof, be affectable by, or ſubject to any terces or courteſies to the wives or huſbands of the heirs and ſubſtitutes above written, or any of them: *But* with this *exception*, from the foreſaid limitation, that the heir of tailzie in the foreſaid lands and eſtate for the time, ſhall have full power to grant ſmall feus of any part of the eſtate, if not encroaching upon the manor place of C. and policies thereto belonging, which he or ſhe ſhall think proper for carrying on trade and manufactures, to artificers, and other trading perſons for their accommodation, each feu not exceeding an Engliſh acre, the feu-duty not to be under the rent for the time, and doubling the ſame at the entry of each heir or ſingular ſucceſſor. *And provided*, that all coals, mines, minerals, ſtone and lime quarries, and moſſes within the ſaid feued grounds, ſhall be reſerved to my ſaid heirs of tailzie; and which feu-rights ſhall contain a ſpecial condition and proviſion, that, in caſe the feuer ſhall diſpone and convey his feu to any other perſon, having alſo a right to a feu of part of the ſaid eſtate, that the ſaid feu-right ſhall be *ipſo facto*

Exception 1ſt from *Limitation* 2d, to grant ſmall feus.

Exception 2d from Limitation 2d, to provide wives and husbands.

facto void and null, and shall revert to my said heirs of entail; *and with* and *under* this exception also from the said limitation, that it shall be lawful to, and in the power of the said C. B. and the heirs of tailzie before mentioned, and each of them, succeeding to the said lands, to provide their wives or husbands, and the wives of their apparent or presumptive heirs, in a liferent locality of any part of the lands and estate before disponed, not exceeding the third part of the said estate in the value of rent, after discounting former liferents (if any be), interest, or annualrent of tailzier's debts, and of provisions granted by former heirs to children, so that after liferents shall not exceed a third part of the surplus rents, but may increase proportionally as the former liferents and debts shall cease and be paid off: *Providing* always, that the said wives and husbands shall not be any ways infeft or secured in an yearly interest or annuity, to be uplifted furth of the said lands and others hereby disponed, or any part thereof, in lieu and consideration of the liferent provisions hereby allowed to be granted, but shall be infeft

in

in the lands themſelves by way of locality; ſo that the liferenters may uplift and receive the rents, and the ſucceeding heirs of entail may not be engaged or bound for payment thereof, or the fee and property of the ſaid lands afterwards affected therewith: *And providing* further, that the reſpective liferents ſo to be granted ſhall be burdened with a proportional part of the feu and teind duties, ceſs, land-tax, miniſter's ſtipend, ſchoolmaſter's ſalary, and other public burdens payable furth of the ſaid lands and eſtate for the time; *and with* and *under* this further exception, that it ſhall be lawful to the ſaid C. B. and heirs of tailzie, notwithſtanding the premiſſes, to grant bonds to their children other than the heir, for payment of competent proviſions to them, and for ſuch ſums of money, bearing intereſt only after the granter's death, as ſhall not in whole exceed the reſpective proviſions following, viz. in caſe there be only one child, other than the heir, two years free rent of the tailzied eſtate; in caſe there ſhall be two children, other than the heir, three years free rent of the tailzied eſtate; and if there ſhall be three

Exception 3d. To grant proviſions to children.

three or more children, other than the heir, then four years free rent of the tailzied eſtate; after deducing all feu-duties, and other legal and annual burdens, excepting land-tax and liferents to wives or huſbands, which ſhall not be deducted in computing the free rents for the childrens proviſions: *Providing* always, that, *where* the ſaid power and liberty has been exerciſed by any of the ſaid heirs of tailzie, in favour of their ſaid children, it ſhall not be lawful to any of the ſucceeeding heirs of tailzie to give any proviſions to their ſaid children, till ſuch time as the prior proviſions, granted by former heirs, be paid and purged, in whole or in part; and that, in caſe of a partial payment of ſuch prior proviſions, *then* new proviſions may be granted, in ſo far as only that the whole proviſions, both old and new, ſhall not, at one time, exceed the four years rent of the ſaid tailzied eſtate, as aforeſaid. *And providing* always, as it is hereby *provided* and *declared*, that any adjudications that ſhall be led for the ſaid children's proviſions, ſhall never expire, or the legal thereof run, but ſhall only remain as a ſecurity for the

principal

principal ſums and annualrents of the ſaid proviſions; nor ſhall it be lawful to, nor in the power of the ſaid C. B. or any of the ſaid heirs of entail, to ſell and diſpone the ſaid lands and eſtate, or any part thereof, for payment of the ſaid children's proviſions; nor ſhall any more than one half of the free rents, profits, and iſſues of the ſaid lands and eſtate before diſponed, ſo far as unaffected at the time, with the liferents, and legal and annual burdens as aforeſaid, be ſubjected and liable to any legal execution for payment of the ſaid proviſions; but declaring that the ſaid half of the free rents, and any other eſtate, real or perſonal, belonging to the heir of entail for the time, ſhall always be ſubjected and liable to any diligence or execution competent by law, for payment or ſecurity of ſuch proviſions to children as are hereby allowed to be granted, and intereſt thereof, and penalties correſponding thereto. And further declaring, as it is hereby ſpecially provided and declared, that the ſaid ſums to be granted for proviſions to children, other than the heir, ſhall nowiſe remain a burden upon, or any ways affect, the ſaid tailzied lands

lands and eſtate, or the rents and profits thereof, for any longer time than the ſpace of twenty-five years from the death of the heir of entail who granted the ſame, without prejudice to the ſaid younger children to affect any other eſtate, real or perſonal, belonging to the heir of entail who poſſeſſes the ſaid eſtate, during the ſaid ſpace of twenty-five years, or any part thereof, within which ſpace the ſaid children's proviſions ought ſo to have been paid; *and with* this *limitation* and *reſtriction*, that it ſhall not be lawful to, nor in the power of me the ſaid C. B. and the ſaid heirs of entail, or any of them, to ſet tacks or rentals of all, or any part of the ſaid tailzied lands and eſtate before diſponed, for a longer ſpace than two nineteen years, or the life of the tackſman to which ſuch tack ſhall be granted; and that no heir ſhall have power to ſet any tacks with a diminution of the rental, except in caſe of neceſſity, in which caſe it ſhall be lawful to ſet tacks by public roup only, for any ſpace not exceeding ſeven years, at the beſt or higheſt rent which can be got at the time, and without taking any graſſums or entry money;

Limitation 3d. Not to grant tacks.

hey; and that ſuch tacks ſhall only be renewed for the like ſpace of ſeven years, and without graſſums, until the ſaid lands ſhall be again raiſed to the former rental; and that it ſhall not be lawful to the ſaid heirs of tailzie to grant any tacks of the manſion-houſe of C. office-houſes, gardens and incloſures thereto belonging, next adjacent to the houſe, ſuch incloſures always notexceeding —— acres for any longer ſpace than the granter's own life; *and alſo with* and *under* this *limitation* and *condition*, that it ſhall not be lawful to the ſaid C. B. or other heirs of entail, or any of them, to conſent, ſuffer, or permit, that any ſpecial adjudication be obtained or paſſed of the foreſaid lands and eſtate, or any part thereof, for any debt or ſums whatever; *and with* and *under* theſe irritancies following, that if I the ſaid C. B. or other heirs of tailzie aforeſaid, or any of them, ſhall contravene the conditions, proviſions, or limitations herein contained, or any of them, either by failing and neglecting to fulfil and perform the ſaid conditions, and every one of them, or by acting contrary to the ſaid reſtrictions and limitations; or any of

Limitation 4th. Not to ſuffer ſpecial adjudications.

General irritancy and reſolutive clauſe.

them, excepting as is above excepted, that, in any of theſe caſes, the perſon ſo contravening, by failing, and omitting to obey the ſaid conditions, or acting contrary to the ſaid limitations, or any of them, ſhall, for himſelf or herſelf, forfeit, amit, and loſe, all right, title, and intereſt to the foreſaid lands and eſtate above diſponed, in the ſame manner as if the contravener were naturally dead, and the right thereof ſhall devolve upon the next heir of tailzie, tho' deſcended of the contravener's body, to whom it ſhall be lawful, whether major or minor at the time, to purſue declarators of irritancy, or actions to denude of my ſaid tailzied lands and eſtate, and to make up titles thereto, by ſerving heir to the perſon laſt infeft therein before the contravener, or to the contravener, him or herſelf, without being any ways liable for ſuch contravener's debts and deeds, and to make up titles by declarator, adjudication, or any other manner by law competent: *And* it is alſo hereby expreſsly *provided* and *declared* that all the debts and deeds of me the ſaid C. B. and the whole other heirs of tailzie above ſpecified, or any of them, contracted made

Irritancy of debts and deeds.

made, or granted, as well before as after their ſucceſſion, to the ſaid lands and eſtate, in contravention of this preſent entail, and proviſions, conditions, reſtrictions, and limitations therein contained, and all adjudications, or other legal diligence and execution that ſhall happen to be obtained or uſed upon the ſame, excepting as above excepted, ſhall *not only* be void and null, with all that ſhall or may follow thereupon, in ſo far as they might any ways affect the ſaid lands and eſtate: *But alſo* I the ſaid C. B. and the heirs of entail reſpectively, upon whoſe debts and deeds ſuch adjudications have proceeded, ſhall, *ipſo facto*, loſe and amit the right and title to the ſaid lands and eſtate; and the ſame ſhall devolve to the next heir of tailzie, in like manner as if the contravener were naturally dead; and that freed and diſburdened of the ſaid debts and deeds, adjudications, or other diligence uſed thereupon: *And with* and *under* this *condition* and *proviſion* likewiſe, that in caſe adjudications, or other diligence, ſhall paſs againſt the ſaid lands and eſtate, or any part thereof, for payment of any real or legal burdens, which

Proviſion to redeem adjudications under an irritancy.

which may be incurred during the poſſeſ-
ſion of the ſaid C. B. or any of the ſaid
heirs of tailzie, or for any other debts to
which my ſaid lands and eſtate may be ſub-
jected, at any time hereafter, other than
adjudications hereby allowed to be led on
bonds of proviſion granted to younger
children, in the terms above ſpecified;
then, and in that caſe, I the ſaid C. B. and
the heirs of tailzie reſpectively, in poſſeſ-
ſion of ſaid tailzied lands and eſtate for the
time, ſhall be bound and obliged to redeem
ſuch adjudication, or other legal diligence,
within two years after the date of ſuch ad-
judication, and to diſburden the ſaid lands
and eſtate thereof in all time to come: And,
in caſe of their failing to redeem, as afore-
ſaid, they ſhall reſpectively forfeit their
right to the ſaid tailzied lands and eſtate,
in the ſame manner as if they were natu-
rally dead; and the right thereof ſhall de-
volve upon the next heir of tailzie, who
ſhall have power to aſcertain his or her
right in manner herein after directed, and
who, immediately upon the lapſe of the
ſaid two years, ſhall have right to redeem
and purge ſuch adjudications, or other di-

ligence,

ſigence, in the ſame manner as if they had been deduced againſt him or herſelf; and which next heir of entail ſhall be obliged to redeem and purge the ſaid adjudications, or other diligence, within five years of their reſpective dates; wherein, if he or ſhe fail, he or ſhe ſhall, in like manner, forfeit his or her right to the foreſaid lands and eſtate, and the ſame ſhall devolve upon the ſubſequent heir of tailzie; and it ſhall be in the power of them, or either of them, whether nearer or remoter, to redeem and purge the ſaid diligences; and the heir who purges the ſame ſhall have right to the ſaid lands and eſtate, in excluſion of all the prior heirs: *Providing* always, that in caſe two or more of the ſaid ſubſequent heirs be ready and willing to redeem and purge, as ſaid is, the neareſt heir ſhall always be preferred to the right and benefit of ſuch redemption, before the remoter heirs, though equally ready and willing, the neareſt heir always making payment to the remoter of a ſum equal to the double of the expences then deburſed by him or her in proſecuting the ſaid redemption; and the perſon ſo redeeming and

Proviſion 2d. In caſe of more heirs offering to redeem.

and purging, ſhall have acceſs to eſtabliſh a right and title to the foreſaid lands and eſtate, in his or her perſon, as if all the nearer heirs were naturally dead, and in the ſame manner as is provided in caſe of other irritancies; but ſubject always to the ſame conditions, reſtrictions, and irritancies, to which the contravening heirs were liable. *And providing* and *declaring* always, that, if I the ſaid C. B. or any of the heirs of tailzie above written, ſhall incur any of the foreſaid irritancies, and that the ſame be declared at the inſtance of any of the ſaid heirs of tailzie; and that thereupon the ſaid tailzied lands and eſtate ſhall accreſce to, and devolve upon the next heir of tailzie exiſting at the time; or, in caſe the ſame ſhall be declared to accreſce and belong to a remoter heir, who has redeemed adjudications, or other diligence affecting the eſtate, through the neglect of prior heirs in not redeeming ſuch adjudications within the ſpaces aforeſaid; that, in all and every ſuch caſe, the heir who has thereupon obtained the right to the ſaid tailzied eſtate eſtabliſhed in his perſon by declarator of irritancy, or other method competent

Proviſion 3d. That an heir ſucceeding on contravention ſhall not be obliged to denude on the exiſtence of a nearer heir.

competent by law, and ſhall thereupon have obtained him or herſelf infeft in the ſaid eſtate, ſhall from thenceforth hold and enjoy the ſaid eſtate, and ſhall not be obliged to denude thereof, though a nearer heir ſhall be exiſting at the time, or altho' a nearer heir ſhall thereafter happen to exiſt; or although ſuch heir ſhall happen to be in minority or abroad, any law or practice to the contrary notwithſtanding; and, upon the death of the heir who ſhall have ſo obtained right to the eſtate upon the contravention of a former heir, or by redeeming adjudications as before mentioned, the ſaid eſtate ſhall fall to the deſcendents of his or her body; but, upon the the failure of ſuch deſcendents, the ſaid tailzied eſtate ſhall again return and belong to the neareſt heir of entail, called by the aforeſaid courſe of ſucceſſion, heir next and immediately after the heir who ſo forfeited his or her right, by contravention, or by neglecting for the ſaid ſpace of two or five years reſpectively, to redeem an adjudication which has been led againſt the eſtate. *Providing* and *declaring* alſo, that it ſhall not be lawful to the ſaid heirs of tailzie, after

Proviſion 4th. Contravener excluded from all management.

after decreet of declarator of contravention ſhall be obtained againſt them, to take or have the management of the foreſaid lands and eſtate, or any part thereof, as adminiſtrator in law to the next heir of tailzie, or any other manner of way whatever; all contraveners being hereby expreſsly debarred and excluded from the poſſeſſion and management of the ſaid eſtate after declarator of contravention; and if, at any time, the contravener would fall of courſe to be adminiſtrator in law to a minor heir in poſſeſſion, in that caſe, and ſo oft as the ſame ſhall happen, it ſhall be lawful to any other perſon to obtain and take out gift of tutory dative to ſuch heir of tailzie, during his or her poſſeſſion; and it ſhall be lawful to ſuch minor heir, upon the expiration of his or her pupilarity, to chuſe curator for him, or herſelf, during his or her minority, in excluſion of the contravener, and to declare them free of all omiſſions whatever in their adminiſtration; any law or practice to the contrary notwithſtanding. All which conditions, limitations, reſtrictions, irritancies, and proviſions before written, ſhall be *verbatim* ingroſſed in the charter

charters and infeftments to follow hereupon, and in all the ſubſequent charters, ſpecial retours, and infeftments of the ſaid eſtate, in manner before provided: *Acts*, *inſtruments*, and *documents* upon the premiſſes, to aſk, take, and extend, and generally all and ſundry other things requiſite and neceſſary thereanent to do, as fully, as freely, in all reſpects, as we the ſaid A. B. and C. D. might do if perſonally preſent, or which to the office of procuratory in ſuch caſes is known to appertain and belong: *Promiſing* to hold firm and ſtable whatever our ſaid procurators ſhall lawfully do in the premiſſes. *And* we hereby *aſſign* and *make over* to me the ſaid C. D. and the other heirs of tailzie above ſpecified, the whole writs, rights, and title deeds of and concerning the ſaid lands and others above diſponed, with the whole procuratories of reſignation, precepts of ſeiſine, and other clauſes therein contained, with all that has followed, or may follow thereupon. *And*, in order to render this entail and ſettlement more effectual, *we* hereby *bind* and *oblige* us, and our heirs at law, executors and ſucceſſors, to free and relieve

Affignation to the writs and evidents.

Obligation to relieve the tailzied eſtate of debts, &c.

the tailzied lands and eſtate before ſpecified, and the heirs named to ſucceed thereto, of and from the payment and performance of the debts and obligements, in which I, for myſelf, or as repreſenting any of my predeceſſors, ſhall be liable at the time of my death; and of and from all claims and demands whatſoever, whereby the ſaid lands and eſtate, or any part thereof, may be evicted from the ſaid heirs of tailzie, excepting the debts and jointures foreſaid, affecting the ſaid lands and eſtate: *But ſaving* and *reſerving* always to me the ſaid A. B. my liferent uſe and enjoyment of the ſaid whole tailzied lands and eſtate, excepting the lands preſently in poſſeſſion of the ſaid C. B. with power to grant tacks for ſuch ſpace as I ſhall ſee cauſe, but not under the former rental; *and declaring* hereby, that all ſuch tacks, or minutes of tack, entered into, or to be entered into, or granted by me, ſhall be good, valid, and ſufficient, againſt the ſaid lands and eſtate, and my ſucceſſors therein; *reſerving* power to them to ſet aſide ſuch tacks, and minutes of tack, upon any ground that does not infer warrandice againſt me, or my heirs and ſucceſſors:

Liferent reſervation.

Other reſervations.

And

And alſo reſerving full power and liberty to me, in caſe of the deceaſe of the ſaid C. B. without heirs of his body exiſting and ſucceeding to him in the ſaid lands, to charge and affect the ſaid lands with debts, in the ſame manner that I could have done before granting theſe preſents; *and with* power alſo, in the ſaid event, to me to revoke and alter any part of the conditions, proviſions, reſtrictions, irritancies, or others, at my pleaſure; and to recal this preſent diſpoſition, in whole or in part, as alſo to empower and authoriſe any of the ſaid heirs of tailzie, to ſuſpend or diſpenſe with the foreſaid conditions, reſtrictions, irritancies, or any of them; *and* all which alterations ſo to be made ſhall be underſtood and taken to be a part of this preſent deed of tailzie, and be as effectual, to all ends and purpoſes, as if the ſame had been inſerted herein: *But* declaring, that any alteration, or revocation of theſe preſents, ſhall not be inferred by implication or conſtruction, but only by expreſs writing under my hand; *and* that, although theſe preſents ſhall be found lying in my own cuſtody, or in the cuſtody of any other perſon

Declaration.

Clauſe diſpenſing with the not delivery.

perſon undelivered, yet I hereby diſpenſe with the not delivery hereof, and declare the ſame to be equally good and effectual, to all ends and purpoſes as if the ſame had been fully executed by infeftment, and formally delivered to any of the ſaid heirs of tailzie, or to any other perſon for their behoof, any law or cuſtom to the contrary notwithſtanding. *And we* the ſaids A. B. and C. D. hereby grant full power, warrant, and commiſſion to

Warrant to record in the regiſter of tailzies.

our procurators, or to any of the heirs of entail, named, or to be named, to cauſe preſent this deed of entail before the Lords of Council and Seſſion judicially, and to procure the ſame recorded in the regiſter of tailzies, and to expede charters and infeftments agreeable thereto, in terms of the act of parliament concerning tailzies, and that either in my lifetime or after my death; but under the foreſaid reſervations, powers, and faculties, conceived in favour of me the ſaid A. B. *And* I conſent to the regiſtration hereof in the books of council and ſeſſion, therein to remain for preſervation; and, if needful, that all execution may paſs upon a decreet

Clauſe of regiſtration.

to

be interponed hereto, in uſual form; nd conſtitute
ur procurators for that purpoſe. *And* to he end I the ſaid C. B. and the heirs of ailzie before written, may be the more eadily infeft and ſeiſed in the lands and thers before diſponed, to be holden in manner above mentioned, *we* hereby *deſire* nd *require* you
nd each of you, jointly and ſeverally, our ailies in that part, to the effect under-ritten, ſpecially conſtitute, that immedi-tely upon ſight hereof, ye paſs to the ground of the ſaid lands *reſpective*, and here give and deliver to me the ſaid C. B. nd the heirs-male of my body in fee; hom failing, to the other heirs of tailzie bove written, in the order above appoint-d, heritable ſtate and ſeiſine, with actual, eal, and corporal poſſeſſion, of *all* and *whole* the lands, mills, teinds, moſſes, muirs, and others above diſponed, and here held as repeated *brevitatis cauſa*; and that y delivering to them reſpectively, or their ertain attorney or attornies, in their names, earers hereof, of earth and ſtone of the ground of the ſaid lands reſpectively, clap

Precept of ſeiſine.

and

and hopper for the ſaid mills, an handful of graſs and corn for the ſaid teinds, and all other ſymbols requiſite and neceſſary; *but* always with and under the conditions, limitations, clauſes irritant and reſolutive, proviſions, declarations, and reſervations above written; and this in nowiſe ye leave undone: The which to do, we commit to you, and each of you, jointly and ſeverally, our bailies in that part foreſaid, our full power by this our precept of ſeiſine, directed to you for that effect. *In witneſs*, &c.

Teſting clauſe, &c.

Obſervation.

The reaſon why the heir's conſent is taken is, that where he is made the inſtitute, he cannot be ſo ſtrictly fettered as the other heirs of tailzie, unleſs he conſent thereto. Where the heir is incapable, through minority, to give a proper conſent, the tailzier may make himſelf the inſtitute.

Bond by heir building a manſion-houſe; aſſignation to the rents of

Bond by an Heir of Entail for three-fourth parts of the expence of building a Manſion-houſe, &c. Aſſignation to the rents of the Tailzied Eſtate during the Heir of Entail's

Entail's life, and of the claim upon the next Heir of Tailzie, by Act of Parliament for payment thereof; and Diſpoſition to Lands not Entailed under Reverſion, in further ſecurity.

the tailzied eſtate, and claim upon next heir, and diſpoſition under reverſion to lands not entailed.

Granter.

I, D. B. Eſq; heir of entail, and in poſſeſſion of the lands and eſtate after-mentioned, *conſidering* that by an act of parliament paſſed in the tenth year of the reign of his preſent Majeſty King George the Third, entitled, 'An act to encourage the 'improvement of lands, tenements, and 'hereditaments in Scotland, held under 'ſettlements of ſtrict entail;' it is enacted, that every heir of entail who lays out money in building a manſion-houſe, or offices, or in repairing, or adding to the manſion-houſe, or offices, upon his eſtate, ſhall be a creditor to the next ſucceeding heir of entail, for three-fourth parts of the money expended by him; provided that the ſums laid out by any one heir of entail in the ſaid building, repairing, or adding, ſhall not be effectual for more than two years rent of the entailed eſtate, after deduction

Recital of the act.

duction of all public burdens, liferents, and interests of debts, which may affect the said estate, as the same shall happen to be at the first Whitsunday after the death of the heir, who expended the money claimed, and provided that the proprietor of the estate, who lays out the money, shall, previous thereto, give notice in writing to the heir of entail next entitled to succeed to the estate, after the heirs of his own body, and record copies of the same, together with the accounts of the money expended, and vouchers thereof, in the sheriff or stewart court-books of the county, within which the mansion-house and offices are situated, in the form and manner thereby directed: *And having resolved* to build upon the entailed estate of C. lying in the shire of —— under the sanction of the aforesaid statute, did intimate my said resolution to H. B. in —— the heir of entail next entitled to succeed to the said lands and estate, under the tailzie and settlement thereof, after the heirs of my own body, conform to a schedule of intimation, subscribed by me upon the —— day of ——— years, forwarded by me

Narrative of intimation to the next heir.

me to the said H. B. and conform to letters of intimation in supplement, dated and passed under his Majesty's signet, the —— day of —— and execution thereof, dated the —— day of the same month, made by —— messenger at the market-cross of Edinburgh, pier and shore of Leith, against the said H. B.; which schedule of intimation, with the said letters in supplement, and execution thereof, are all recorded in the sheriff court-books of —— upon the —— day of —— thereafter, all in the said year ——; agreeable to the said statute: *In consequence* whereof, I proceeded to build a new mansion-house at C. with suitable offices, and to inclose and wall in a proper garden, and to build a gardener's house, and servants houses, proper for a farm, all of the dimensions and conveniences mentioned in the said intimation: And, in the year —— I expended on the said building to the amount of —— Sterling, conform to an account thereof, and vouchers of said account, all recorded in the said sheriff court-books, upon the —— day of —— years: That in the year —— I expended on the said

Of improvements and expenditure.

buildings the farther ſum of —— Sterling, conform to another account, and vouchers thereof, all recorded as aforeſaid, upon the —— day of ——: And I likewiſe expended upon the ſaid buildings, upon the —— day of ſaid month of —— the further ſum of —— Sterling, conform to receipt of that date, recorded as aforeſaid, on the —— day of ——; and preceding the ſaid —— day of —— in that year, I further expended upon the ſaid buildings the ſum of —— Sterling, conform to another account of ſaid expences, and vouchers thereof, all recorded as above, of the date laſt above mentioned; the ſaid whole expences of building, extending together, at and preceding the —— day of —— laſt, to the ſum of —— Sterling, conform to the accounts and vouchers, all recorded in terms of the ſtatute: *Wherefore* I am a creditor by law upon the ſaid eſtate, and to the heirs of entail ſucceeding therein, for the ſum of —— Sterling, being three-fourth parts of the whole money ſo expended, at leaſt to the amount of two years free rent of the entailed eſtate, allowed and provided in that behalf by the act

act of parliament aforesaid. *And, seeing* J. K. Esq; of L. has made payment to me of the said sum of ———, whereof I grant the receipt, renouncing all exceptions to the contrary: *Therefore* I *bind* and *oblige* me, my heirs of tailzie and provision, succeeding to me in the said entailed estate of C. and my other heirs of line, and other heirs, executors, and successors whatsoever, without the order or benefit of discussing them, to content and repay to the said J. K. and his heirs or assignees whatever, the said sum of ——— Sterling, at the term of Martinmas next to come, with ——— Sterling of liquidate penalty in case of failure, and the legal interest of the said principal sum, from the term of Whitsunday ——, at two terms in the year, Whitsunday and Martinmas, by equal portions, beginning the first term's payment of the said interest at Martinmas next, for the half year preceding, and so forth to continue thereafter during the not payment of the said principal sum, with —— Sterling of liquidate expences, for each term's failure in payment of the said annualrent. *And for the* said J. K. and his foresaids, their security, and for payment

Subsumption.

Personal obligation.

Assignation to the rents of the tail-

to

zied eſtate during the heir of entail's life, or till payment, and to the accounts of expenditure.

to them of the ſaid principal ſum, and annualrents that ſhall become due thereupon out of the ſaid entailed eſtate; and, in corroboration of the ſaid perſonal obligement above written, but without hurt or prejudice thereto, *ſed accumulando jura juribus*; I hereby *make*, *conſtitute*, and *ordain* him and them, my lawful ceſſioners and aſſignees, *not only* in and to the rents, maills, and duties, profits, and produce of the ſaid entailed lands and eſtate of C. and of the mines and minerals therein contained, and thereto belonging, and to the tacks thereof, and tack-duties therein contained, for all years, terms, and ſpace of time, from and after Whitſunday laſt 177 years, during my life and age, and until they ſhall be completely ſatisfied and paid of the ſaid ſum of ——— Sterling of principal, and intereſt that ſhall become due thereupon, and of the ſaid liquidate penalty and termly failures, if incurred, and of all expence that they ſhall ſuſtain concerning the premiſſes; *but alſo* in and to the ſaid ſeveral accounts of the expence of ſaid building, and vouchers of ſaid accounts, recorded in manner foreſaid, and to all right, title, and intereſt,

intereſt, competent to me and my heirs or donators, againſt the heirs of entail who ſhall ſucceed to me in the ſaid eſtate of C. and mines thereof, for payment and recovery from the ſaid heirs, or from the ſaid entailed eſtate, of the ſaid ſums ſo expended by me in buildings, to the extent of three-fourth parts thereof, and not exceeding two years free rent of the ſaid entailed eſtate and lands, in terms of the ſtatute above mentioned, made in that behalf; and in and to the whole powers, privileges, conditions, and proviſions, granted to me, or my foreſaids, by the ſaid act of parliament, for making the ſaid ſums effectual: *Surrogating* and *ſubſtituting* the ſaid J. K. and his foreſaids, in the full right and place of me, and my heirs whatſoever, in and concerning the premiſſes; with power to do every thing requiſite and neceſſary for ſecuring, and making effectual to themſelves, the debts and ſums of money above aſſigned: *Declaring* always, that if the ſaid J. K. ſhall recover payment of the ſaid debt during my life, either from the rents, or from any other funds, then he ſhall be obliged to repone and retroceſs me, my heirs or aſſignees,

Declaration, that on the creditor's recovering payment he ſhall re-

troceſs the heir that he may recover the ſum from the after heirs.

assignees, in my right to the said debt; to the effect only, that we may recover the sums from the heirs succeeding to the entailed estate of C. *Moreover*, I *not only bind* and *oblige* me, and my heirs or successors whatsoever, betwixt and the term of Martinmas next, to sue for and recover a decree of the proper judge, for cognition of the amount of expences laid out by me in the aforesaid building, and ascertaining the proportions thereof chargeable upon the after heirs of entail: *But also* that immediately after my decease, my said heirs whatsoever shall procure, from the proper court, a decree declaratory of the yearly free rent and produce of the said entailed estate and mines. And, finding that the said sum of —— Sterling is under two years free rent of the said estate and mines, as they shall be rented at that period. *Which* assignation in security above written, I *bind* and *oblige* me, and my heirs whatsoever, to warrant to the said J. K. and his foresaids, at all hands, and against all deadly, as law will; *declaring*, that in case they shall think fit to enter into possession of the rents, profits, and duties of the

Obligation to obtain decreet of cognition of the amount of the expenditure, and proportion chargeable to the after heirs; and decreet declaratory of the rent.

Warrandice.

Declaration, that the creditor shall only

he ſaid lands and mines, during my life, in virtue of the above aſſignation, then hey ſhall only be liable to account for heir actual intromiſſions, but not for miſſions, neglects, or inſolvency of tenants r debtors; and that, after my deceaſe, hey ſhall nowiſe be liable for any neglect r omiſſion that may happen in following orth the proviſos, conditions, and direc- ons of the ſaid act of parliament, reſpec- ng the demand and recovery of the ſaid ms from my heirs of entail, further than at the ſaid J. K. and his foreſaids, ſhall obliged to allow my heirs whatſoever uſe his or their name in making ſuch emand to, and recovery from the ſaid irs of entail, ſo as my heirs whatſoever ay be thereby better enabled to diſcharge e foreſaid debts, and relieve themſelves the obligations, and of the warrandice ove impoſed upon them. *And, in like anner*, for the ſaid J. K. and his foreſaids, heir further ſecurity, and more ſure pay- ent of the ſaid principal ſum of —— terling, annualrents thereof, liquidate pe- alties, and termly failures above mention- ; and without hurt, prejudice, or dero- gation

be liable for intromiſſions;

and to allow the debtor to uſe his name for recovery thereof from the after heirs.

Diſpoſition in ſecurity.

Narrative.

gation to the perſonal obligation and aſſig-
nation in ſecurity above written; but, in
further corroboration thereof, *et accumu-*
lando jura juribus, I hereby *convey* and *diſ-*
pone to, and in favours of them, heritably,
but under reverſion, conform to the clauſe
of redemption, and with and under the
ſpecial conditions and declarations after in-
ſert, *all* and *whole* the lands of E. lying in
the pariſh of —— and ſhire of ——, and
that in ſecurity to the ſaid J. K. and his
foreſaids, to the effect that, in caſe my heirs
ſhall, at any time hereafter, fail in making
punctual payment of the ſaid annualrents as
they ſhall fall due, or of the ſaid principal
ſum, if demanded, and of the liquidate pe-
nalty, and termly failures, if incurred;
then, and upon ſuch failure, he the ſaid J.
K. and his foreſaids, may take poſſeſſion
of the lands and others above diſponed, in
ſecurity, and apply the rents, maills, and
duties thereof, for payment of the debt
and ſums of money above mentioned:
Declaring, that the ſaid J. K. and his fore-
ſaids, may demand and recover payment
of the ſaid ſums, principal, intereſt, and
penalty, either out of the rents of the ſaid
entailed

Diſpoſitive.

Declaration, that the creditor may demand his payment upon

entailed eſtate and mines thereof, and from the heirs of entail aforeſaid ſucceeding thereto, in conſequence of the foreſaid aſſignation in ſecurity; or, in their option, they may enter to poſſeſſion of the ſaid lands of E. diſponed in ſecurity, and may recover the ſaid ſums, or ſuch part thereof as ſhall remain unpaid out of the ſaid lands of E. and rents thereof; but that the ſaid ſecurities ſhall remain ſeparate and diſtinct rights, and may be uſed by the creditor either together or ſeparately, the one without prejudice of the other, and without confuſion or innovation. *Providing* always, that, if the ſaid J. K. and his foreſaids, ſhall have recourſe to the ſaid diſpoſition in ſecurity, and ſhall, in virtue thereof, levy and recover the ſaid ſums, or any part of the ſame, out of the ſaid lands of B. above diſponed, *then*, and *in that* caſe, upon requiſition of my heirs general, and on their expence, the ſaid J. K. and his foreſaids, ſhall be obliged to convey to my ſaid heirs general the ſaid debts and ſums of money, to the extent only of what ſhall have been ſo recovered out of the ſaid lands of E. with warrandice from fact and

either of theſe rights which ſhall remain diſtinct rights, without prejudice one of another.

Proviſion, that on recovery in virtue of the diſpoſition, the creditor ſhall convey the debt, that the heir may operate his relief by the act of parliament.

deed allenarly, to the end my ſaid heirs general may be entitled to claim relief thereof from the heirs of entail of the ſaid eſtate of C. under ſanction of the ſaid act of parliament. *And further declaring*, that, in caſe the ſaid J. K. and his foreſaids, ſhall enter into poſſeſſion of the ſaid lands of E. and ſhall uplift the rents and duties of the ſame, or any part thereof, for payment of the ſaid debt, that then they ſhall only be liable for their actual and perſonal intromiſſions; but not for omiſſions, or inſolvency of tenants, during ſuch poſſeſſion; and it ſhall be in their power to relinquiſh and reaſſume the poſſeſſion of the ſaid lands, from time to time, at pleaſure, without previous intimation to me or my heirs. *And further declaring*, that, in caſe the ſaid J. K. or his foreſaids, ſhall happen to uſe perſonal diligence upon the perſonal obligation to pay above written, yet the ſame ſhall nowiſe loſe or prejudge this preſent diſpoſition in ſecurity, and infeftment to follow hereupon; but the ſame ſhall remain good and effectual, notwithſtanding thereof, and it ſhall be lawful for them to make uſe of ſuch perſonal diligence, or of theſe

Declaration, that he ſhall only be liable for his intromiſſions with the rents of the lands diſponed in ſecurity.

Declaration, that perſonal diligence ſhall not invalidate the right in ſecurity.

theſe preſents, or of all together, as accumulated and diſtinct rights, the one without prejudice of the other: *In which* lands and others above diſponed, in ſecurity as aforeſaid, I *bind* and *oblige* me, and my foreſaids, to infeft and ſeiſe the ſaid J. K. and his foreſaids, heritably but redeemably, conform to the clauſe of reverſion after inſert; and that by two ſeveral infeftments and manners of holding, the one thereof to be holden of me, and my ſaid heirs and ſucceſſors whatſoever, in free blench, for payment of a penny Scots money, upon the ground of the ſaid lands, at the term of Whitſunday yearly, in name of blench farm, if aſked allenarly; and the other of the ſaid infeftments to be holden from us, of our immediate lawful ſuperiors of the ſaid lands, in the ſame manner, and as freely, in all reſpects, as I held or might hold the ſame myſelf; and that either by reſignation or confirmation, or both of the ſaid infeftments, the one without prejudice of the other. *And*, for effectuating the ſaid infeftment by reſignation, I hereby *make* and *conſtitute*

Obligement to infeft.

Procuratory of reſignation.

and each of them, jointly and ſeverally, my

my lawful and undoubted procurators, giving, granting, and committing to them, my full power, warrant, and authority, for me, and in my name, to reſign, as I hereby *reſign, ſurrender, upgive, overgive,* and *deliver, all* and *whole* the ſaid lands of E. particularly above deſcribed, and here held as repeated *brevitatis cauſa, in the hands* of my immediate lawful ſuperiors in the ſaid lands, or their commiſſioners, in their names, having power to receive reſignations, and grant new infeftments; *in favour*, and for new infeftments of the ſame, to be made and granted to the ſaid J. K. and his foreſaids, heritably, but redeemably, conform to the clauſe of redemption after inſert: Acts, inſtruments, and documents, one or more, if needful, upon the premiſſes, to ask and take, and generally every other thing requiſite and neceſſary thereanent to do, uſe, and exerce, as fully and freely, in all reſpects, as I could do myſelf, if perſonally preſent, or which to the office of procuratory, in ſuch caſes, is known to belong; promiſing to hold firm and ſtable whatever my ſaid procurators ſhall do, or lawfully cauſe to be done, thereanent:

thereanent: *Which* lands above diſponed in ſecurity, with this preſent conveyance thereof, and infeftment to follow hereupon, I *bind* and *oblige* me, and my foreſaids, to warrant to the ſaid J. K. and his foreſaids, at all hands, and againſt all deadly; but under reverſion always as under-written. *And further*, I hereby *make*, *conſtitute*, and *ordain*, the ſaid J. K. and his foreſaids, my ceſſioners and aſſignees, *not only* in and to the rents, maills, and duties, kains, cuſtoms, and caſualties of the ſaid lands, for crop and year ——, and all crops and years thereafter, during the not payment of the whole ſums, principal, intereſt, and penalty above mentioned, if incurred; *but alſo* in and to the whole writs and evidents, old and new, of and concerning the ſaid lands and others, under reverſion always, as ſaid is: *Surrogating* and *ſubſtituting* him, and his foreſaids, in my full right and place of the premiſſes; with power to do every thing requiſite and neceſſary hereanent, which I could have done before granting this aſſignation, which, in ſo far as concerns the writs and evidents, I bind and oblige me, and my foreſaids, to warrant at all

Warrandice of the diſpoſition in ſecurity.

Aſſignation to the rents

and writs.

all hands, and againſt all mortals; and, i
ſo far as concerns the maills and duties
from our own proper facts and deeds, done
or to be done, in prejudice hereof, allenar
Regiſtration. ly. *And I conſent* to the regiſtration here
of in the books of council and ſeſſion, o
others competent, that letters of horning
on ſix days charge, and all other executio
needful, may paſs hereon, in form as effeirs
and thereto conſtitute
Precept of ſeiſine. my procurators. *And, to the effec*
the ſaid J. K. and his foreſaids, may b
immediately infeft in the ſaid lands an
others, in ſecurity, to be holden of me, an
my foreſaids, or from us, of our immedi
ate lawful ſuperiors, by confirmation,
hereby deſire and require you
and each of you, jointly an
ſeverally, my bailies in that part, to th
effect under-written, ſpecially conſtitute
that, upon ſight hereof, ye paſs and giv
heritable ſtate and ſeiſine, with actual, rea
and corporal poſſeſſion, to the ſaid J. K
and his foreſaids, of *all* and *whole* the ſai
lands of E. lying and deſcribed as aforeſaid
and here held as repeated *brevitatis cauſa*, i
real ſecurity for the more ſure payment to th
ſai

ſaid J. K. and his foreſaids, of the ſaid principal ſum, annualrents that ſhall become due thereupon, and penalty above mentioned, if incurred through failure; and that by deliverance to him, or his foreſaids, or their certain attorney, bearers hereof, of earth and ſtone, of and upon the ground of the ſaid lands, and all other ſymbols, if any are requiſite. *Declaring*, that the ſaid lands of E. diſponed in ſecurity, are, and ſhall be redeemable by me, or my heirs and donators whatſoever, from the ſaid J. K. and his foreſaids, by payment; or, in caſe of abſence or refuſal, by conſignation for their behoof, of the ſaid principal ſum of ——— Sterling, annualrents that ſhall be due thereupon at the time, liquidate penalty, and termly failures, which ſhall happen to be incurred, or of ſuch part of theſe ſums as ſhall be remaining at the time due, and not recovered from the heirs in the entailed eſtate of C. and that whole and together in one ſum, at the ſaid term of Whitſunday next, or any other term of Whitſunday or Martinmas hereafter, upon lawful premonition always of ſixty days, to be made by me, or my

Clauſe of redemption.

my foresaids, to the said J. K. and his fore-
saids, personally, or at their dwelling-
places, in presence of a notary and wit-
nesses, as effeirs; the place of redemption
to be within the Royal Bank office at E-
dinburgh, and the consignation, in case of
absence or refusal, to be made in the hand
of the cashier of the said bank for the time
upon the peril of the consigner. *And fur-
ther declaring*, that an extract hereof, or
of the seisine to follow hereon, shall be a
effectual, for using the said order of re-
demption, as if a particular letter of rever-
sion was granted and registered for that ef-
fect; and that the conveyance, discharge
or renunciation, or other extinction, that
may be demanded at payment of the said
debt, shall be expede upon the proper
charges of me and my heirs; and this in
nowise ye leave undone: The which to
do, I commit to you, conjunctly and seve-
rally, my full power, by this my precept
of seisine, directed to you for that effect.
In witness whereof I have subscribed these
presents, &c.

Declaration, that the discharge shall be on the expence of the debtor.

Subscription clause.

Obser-

Observation.

From this deed any conveyance, or se-curity, originating from the act with re-gard to improvements upon entailed eſtates, may eaſily be framed; any more examples thereof would therefore be needleſs.

Inſtruments of Seiſine upon Deeds of Entail, &c.

Inſtrument of ſeiſine is not generally taken upon a deed of entail, in virtue of the precept of ſeiſine therein contained: but a charter of reſignation is obtained upon the procuratory of reſignation, and infeftment taken upon the precept of ſeiſine contained in the charter; as, by the firſt feudal rules, the ſuperior could not be

compelled to receive any vaſſal in the lands other than the heir expreſſed in the inveſtiture; for the ſuperior alone had the power of aſcertaining to what order of heirs the fee granted by himſelf was to deſcend. Hence it was juſtly maintained that no vaſſal could limit the deſcent of his feu to any new order of heirs, without the ſuperior's conſent.—See *Craig de Feudis* p. 344. § 20.: And, during the ſubſiſting of wardholding, there might have alſo been ſome danger in executing a precept of ſeiſine, on account of recognition. This is indeed, now taken off by the act aboliſhing wardholdings: But, owing to the foregoing conſiderations, and that the ſuperiorities cannot be carried but by a public holding, the former practice is commonly obſerved. As an inſtrument of ſeiſine, however, might no doubt be taken upon the precept in the deed of entail, I have thought it proper to give a model of one as follows:

—— *up*

—— *upon Deed of Entail.* —*upon deed of entail.*

In, &c. *having*, and in his hands *holding*, Narrative
a diſpoſition, or deed of entail, dated ——
made and granted by A. B. Eſq; of C.
whereby (for the cauſes therein ſpecified),
the ſaid A. B. did, with and under the
conditions, limitations, clauſes irritant and
reſolutive, proviſions, declarations, and re-
ſervations, therein and after written, with
conſent of C. B. his eldeſt lawful ſon, *give*,
grant, and *diſpone*, to and in favours of the
ſaid C. B. his eldeſt ſon, and the heirs-male
lawfully procreated, or to be procreated,
of his body in fee; whom failing, to the
heirs-female procreated, or to be procre-
ated, &c. (and go on with the whole ſub-
ſtitutions, as in the procuratory of reſigna-
tion, to the words '*heritably and irredeem-
'ably*,' and ſay), heritably and irredeem-
ably, *all* and *whole* (inſert the lands), to-
gether with all right, title, and intereſt,
which he had, or could pretend to the ſaid
lands, teinds thereof, or others before ſpe-
cified, or to any part or portion thereof,
and

and pertinents of the ſame; but with and under the conditions, limitations, clauſes irritant and reſolutive, proviſions, reſervations, and declarations under-written, viz. *with* and *under* the condition always (and go on with all the conditions, &c. to the words *acts, inſtruments*, &c.) as the ſaid diſpoſition, or deed of entail, containing obligement to infeft, by two ſeveral infeftments and manners of holding, procuratory of reſignation, the precept of ſeiſine after inſert, and ſeveral other clauſes, more fully bears, &c. (*Delivery of ſeiſine*, in terms of the precept.)

—upon bond, aſſignation, and diſpoſition, in ſecurity, by heir of tailzie.

—— *upon Bond, Aſſignation, and Diſpoſition, in Security, by Heir of Tailzie.*

Invocation.

In the name of God, amen. Be it known to all men, by this preſent public inſtrument, That upon, &c. *in preſence* of me notary-public, and witneſſes ſubſcribing, *compeared* perſonally

Date, &c.

Compearance of the vaſſal's procurator.

as procurator for, and in name of

of J. K. Eſq; of L. (whoſe power of attorney was ſufficiently known to me notary-public), *having*, and in his hands *holding*, a bond, aſſignation, and diſpoſition, in ſecurity, dated ———, containing the precept of ſeiſine after inſert, made and granted by D. B. of C. Eſq; to the ſaid J. K. *narrating*, *that* the ſaid D. B. had expended ——— Sterling, in erecting buildings upon his entailed eſtate of C. and that he was a creditor by law upon the ſaid eſtate, and to the heirs of entail ſucceeding therein, for the ſum of ——— Sterling, being three-fourth parts of the money ſo expended, at leaſt to the amount of two years free rent of the entailed eſtate, conform to act of parliament in favour of heirs of entail, paſſed in the tenth year of his preſent Majeſty; *and* that the ſaid J. K. had made payment to him of the ſaid ſum of ———: *Therefore*, he bound and obliged himſelf, his heirs of tailzie and proviſion, ſucceeding to him in the ſaid entailed eſtate of C. and his other heirs of line, and other heirs, executors, and ſucceſſors whatſoever, to content and repay to the ſaid J. K. his heirs, or aſſignees what- Narrative.

whatſoever, the ſaid ſum of ——— Sterling, at the term of Martinmas next, with ——— of liquidate penalty, in caſe of failure; and the legal intereſt of the ſaid principal ſum from Whitſunday laſt, at two terms in the year, Whitſunday and Martinmas, by equal portions, beginning the firſt term's payment of the ſaid intereſt at Martinmas next, for the half year preceding, and ſo forth to continue during the not payment of the ſaid principal ſum, with ——— Sterling for each term's failure in payment of the ſaid annualrent: *And* for the ſaid J. K. and his foreſaids their further ſecurity, and more ſure payment of the ſaid principal ſum, and annualrents thereof, out of the ſaid entailed eſtate, *made*, *conſtituted*, and *ordained*, him and them, his lawful ceſſioners and aſſignees, *not only* in and to the rents, maills and duties, profits, and produce of the ſaid entailed lands and eſtate of C. and of the mines and minerals therein contained, and thereto belonging, and to the tacks thereof, and tack-duty therein contained, for all the years, terms, and ſpace of time after Whitſunday laſt ——— years, during his life

life, until he ſhould be completely ſatisfied and paid of the ſaid principal ſum, intereſt, liquidate penalty, and termly failures, if incurred, and of all the expence they ſhould ſuſtain concerning the premiſſes; *but alſo* in and to the whole accounts of the ſaid buildings and vouchers thereof, recorded in manner therein mentioned, with all right competent to him, and his heirs or donators, againſt the ſaid heirs of entail, for payment of the ſaid ſums, to the extent aforeſaid, in terms of the ſaid ſtatute, in all points; which likewiſe contains clauſe of abſolute warrandice of the ſaid aſſignation in ſecurity, and ſundry other clauſes. *And, in like manner*, for the ſaid J. K. and his foreſaids, their further ſecurity, and more ſure payment of the ſaid principal ſum of ——, anuualrents thereof, liquidate penalty, and termly failures above mentioned, and without hurt or prejudice to the ſaid perſonal obligement and aſſignation, he thereby *conveyed* and *diſponed* to, and in favours of them heritably, but under reverſion, conform to the clauſe of redemption after inſert; and with and under the conditions and declarations therein mentioned,

tioned, *all* and *whole* the lands of E. lying in the pariſh of —— and ſhire of ——, in ſecurity to the ſaid J. K. and his foreſaids, to the effect that, in caſe the heirs ſhould at any time thereafter, fail in making punctual payment of the ſaid annualrents as they ſhould fall due, or of the ſaid principal ſum, and liquidate penalty, and termly failures, if incurred, then, and upon ſuch failure, the ſaid J. K. and his foreſaids might take poſſeſſion of the ſaid lands, and apply the rents thereof for payment of the ſums of money above mentioned; to be holden of the granter and his heirs, or from them of their immediate lawful ſuperiors, in manner mentioned in the ſaid bond, aſſignation, and diſpoſition, in ſecurity; which contains alſo procuratory of reſignation, clauſe of abſolute warrandice, aſſignation to the writs and evidents, the precept of ſeiſine, and clauſe of reverſion after inſert, with ſundry other clauſes and declarations; *and paſſed* with us to the ground of the ſaid lands of E. and there the ſaid procurator and attorney foreſaid, *exhibited* and *preſented* the ſaid bond, aſſignation, and diſpoſition, in ſecurity,

Delivery to the bailie.

In ſecurity, to bailie in that part, ſpecially conſtituted by the precept of ſeiſine after inſert, deſiring and requiring him to proceed to the execution of the ſaid precept, and of the office of bailiary thereby committed to him: Which deſire the ſaid bailie, knowing to be juſt and reaſonable, received the ſaid bond, aſſignation, and diſpoſition, in ſecurity into his hands, and delivered the ſame to me notary-public, ſubſcribing, to be read and publiſhed to the witneſſes preſent, and ſubſcribing; which I accordingly did; and of which precept of ſeiſine, and clauſe of reverſion, the tenor follows: '*And to the effect*,' &c. *After* reading and publiſhing of which bond, aſſignation, and diſpoſition, in ſecurity, and the precept of ſeiſine above inſert, therein contained, the ſaid bailie in that part foreſaid, by virtue thereof, and of the office of bailiary thereby committed to him, *gave* and *delivered* heritable ſtate and ſeiſine, with actual, real, and corporal poſſeſſion, to the ſaid J. K. of *all* and *whole* the ſaid lands of E. lying and deſcribed as aforeſaid, and

Acceptance by him.

Delivery to the notary.

Publication by him.

Inſertion of the precept.

Delivery of ſeiſine.

here held as repeated *brevitatis cauſa*, i
real ſecurity, and for more ſure paymen
to the ſaid J. K. and his foreſaids, of th
ſaid principal ſum, annualrents thereo
and penalty above mentioned, if incurre
through failure, heritably, but redeemably
conform to the clauſe of reverſion contain
ed in the ſaid diſpoſition in ſecurity; an
that by deliverance to the ſaid
procurator and attorney fore
ſaid, of earth and ſtone of and upon th
ground of the ſaid lands and others, as u
is, after the form and tenor of the ſaid di
poſition in ſecurity, and precept of ſeiſin
above inſert, therein contained, in a
points: *Whereupon*, and upon all and ſun
dry the premiſſes, the ſaid
procurator foreſaid, aſked and too
inſtruments, one or more, in the hand
of me notary-public, ſubſcribing. *Thes
things*, &c.

Procurator or attorney's taking of inſtruments, &c.

TITL

TITLE X.

Truſt Diſpoſitions, and Deeds of Acceſſion thereto.

Obſervations on truſt-diſpoſitions.

TRUST Diſpoſitions, framed in reaſonable terms, and properly carried into execution, may no doubt anſwer a valuable purpoſe, by ſaving a conſiderable part of the time and expence neceſſary for bringing the whole of the debtor's eſtate to ſale, or ſuch part of it as may be neceſſary, for the payment of his creditors, and dividing the price among them, and by ſuperſeding the neceſſity of proceſſes of adju-

adjudication, and ranking and ſale. If this ſtep is thought eligible, where the eſtate is not more than ſufficient for payment of the debts, it muſt appear as much more ſo, where either only a part is neceſſary to be ſold, or where there is expected to be a conſiderable reverſion; and it is certainly juſt, that the debtor ſhould give his creditors all the aſſiſtance in his power, to render their payment more expeditious. It may, however, be obſerved, that a creditor cannot, without his own conſent, be deprived of the privilege which the laws of the kingdom afford him, of attaching his debtor's property for payment of his debts; and it is now, therefore, univerſally allowed, that no truſt-right, in terms however reaſonable, granted by an inſolvent perſon, can bar the legal diligence of a creditor, unleſs he accede thereto. To give a truſt diſpoſition effect, it is therefore neceſſary, that a deed of acceſſion be entered into by the whole creditors of the perſon granting ſuch truſt diſpoſition.

Their effects on freehold qualifications.

It has been formerly obſerved, that, in the caſe of adjudication, by act 1681, 'during the legal, the heritor having right 'to

'to the reverſion ſhall have vote;' and, with reſpect to *rights in ſecurity* and *for relief*, that, by the ſaid act, 'no perſon infeft for relief, or payment of ſums, ſhall have vote, but the granters of the ſaid rights, their heirs and ſucceſſors.' But the law is not quite ſo favourable to perſons granting truſt diſpoſitions. The caſe of *David Loch* of *Over Cairnbee*, from the county of Fife, in January 1776, who had granted a diſpoſition of his eſtate, containing procuratory of reſignation, and precept of ſeiſine, to a truſtee for behoof of his creditors, and who had accordingly been baſe infeft in virtue of the precept, did not receive the determination of the court; the merits of the election having been ſettled by a committee of the houſe of commons. But, in the caſe of *Gilbert M'Adam of Merkland*, at the election for the county of Ayr, in the year 1780, it having been objected that he had diveſted himſelf in the ſame manner, and that the truſtees had repeatedly advertiſed a ſale of the lands in the newſpapers, the freeholders repelled the objection: But a complaint having been preferred to the court

of

of ſeſſion, they ſuſtained the objection, and ordered Mr M'Adam to be expunged from the rolls *. Though it was pled that a renunciation would, at any time, divest the truſtees; that the truſt diſpoſition was only a mandate to ſell; and that the vote was preſerved by act 1681. It being anſwered, that his right was extinguiſhable at the will of another; that, in the caſe alluded to in the act 1681, the radical right remained with the granter: But here nothing ſubſtantial was left, and the nominal right could in a moment be annihilated.

Truſt-diſpoſition.

Truſt Diſpoſition.

Granter.

Conſideration.

I, A. B. of C. *conſidering* that I am reſting and owing ſeveral conſiderable debts agreeable to a liſt of the ſame, ſubſcribed by me as relative hereto; *therefore*, and for further

* March 7. 1781. Muir and Dalrymple *contra* M'Adam.

further ſecurity, and more ſpeedy and effectual payment to my ſaid creditors, or any other creditors, who may be omitted in ſaid liſt, ſhould any be, as well as for the more eaſily ſettling my affairs, and the preſervation of ſuch parts of my lands and eſtate, as may remain after payment of my debts, *do* hereby *alienate* and *diſpone to*, and *in* favour of C. D. of E. F. G. of H. and J. K. in L. and the accepters or accepter, and ſurvivers or ſurviver of them, any two of them being a quorum, for all the purpoſes after mentioned, except that of ſelling the lands, in which all of them ſhall concur, heritably and irredeemably, *in truſt*, for the uſes, ends, and purpoſes after mentioned; but always with and under the conditions, proviſions, and declarations herein after mentioned, *all* and *whole* the lands, baronies, and others under-written, viz. (here take in the deſcription of the eſtate), together with all right, title, intereſt, I have, or can pretend to the ſaid lands, baronies, and others; *with full* power to the ſaid truſtees, or quorum of them foreſaids, either to borrow ſuch ſums of money, as may be requiſite to pay the debts

Diſpoſitive. Truſtees.

Power to borrow money to pay the debts,

debts due by me, and to burden the fore
ſaid lands and eſtate hereby diſponed i
truſt, for payment of the ſame; and tha
by granting diſpoſitions under reverſion
diſpoſitions in ſecurity, heritable bonds, o
ſuch other rights and ſecurities for th
ſame, as the ſaid truſtees, or quorum o
them, ſhall judge, or be adviſed, to be moſ
proper and convenient; *or*, in their option
to ſell and diſpone, heritably and irredeem
ably, the whole, or ſuch parts and portion
of the above lands and others, as may b
neceſſary for payment of my ſaid debts
and that either by wholeſale, or in parcels
and either by public roup, or private bar
gain: And if, by the firſt, after makin
timeous and proper intimation thereof i
the Edinburgh or other newſpapers, and t
grant diſpoſitions of the ſaid lands and o
thers, or of ſuch parts or portions of th
ſame as they ſhall ſo think proper to diſ
poſe of, to the ſaid purchaſer or purchaſer
thereof, containing all the uſual and ne
ceſſary clauſes in diſpoſitions; with powe
alſo to aſſign the ſaid purchaſer, or purcha
ſers, my abſolute warrandice herein afte
contained, and bind themſelves in warran
dice

or to ſell the lands.

dice, from fact and deed only; and with power to the ſaid truſtees to apply the ſums ſo to be borrowed, or the price or prices of the ſaid lands and others, when ſold, for payment of my ſaid debts, due to my ſaid ſeveral creditors, or of ſuch debts, prior to the date hereof, not contained in the ſaid liſt, relative hereto, as any creditor of mine ſhall produce vouchers of, or otherwiſe ſufficiently inſtruct, to be juſt debts of mine: *But providing* and *declaring* always, as it is hereby expreſsly *provided* and *declared*, that, as lands are at preſent ſelling very low, it ſhall not therefore be in the power of my ſaid truſtees, to ſell the lands and others hereby diſponed, or any part of them, within the ſpace of three years from the date hereof, without the expreſs conſent in writing of me; and, in caſe of my death, of my heir for the time, to ſuch ſale or ſales: But, after expiry of the ſaid three years, they are hereby fully empowered to ſell the ſame, without any ſuch conſent had or obtained. *And declaring* always, that, of the ſaid lands, baronies, and others, the lands in the pariſh of —— ſhall, in the firſt place, be ſold, and the

Proviſion not to ſell within three years without the grantee's conſent.

Declaration, what lands are to be ſold firſt.

proceeds of the ſame applied for payment of the ſaid debts: And, in caſe the price thereof does not extinguiſh the ſaid debts, then the remainder, or ſuch part of the ſaid lands, as the ſaid truſtees ſhall think neceſſary for paying the reſidue of my ſaid debts, ſhall, in like manner, be ſold as ſaid is; it being always underſtood to be my intention, and I hereby recommend it ſtrongly to my ſaid truſtees, not to ſell, without an abſolute neceſſity, the houſe, office-houſes, gardens, and policy of C. and the following lands immediately about, and connected with the ſame, viz. (here inſert them); *and alſo* with power to the ſaid truſtees, or quorum of them foreſaid, to ſet tacks of the ſaid lands, for ſuch a number of years (not exceeding nineteen), and under ſuch conditions and limitations as they ſhall think proper, excepting always the lands at preſent in my natural poſſeſſion in and about the houſe of C. which are only to be ſet in graſs from year to year. *And declaring* likewiſe, that the ſaid truſtees are to have allowance of all their neceſſary expences, and perſonal charges, in the management of the ſaid truſt

Power to ſet tacks.

Declaration, that truſtees are to have allowance

truſt right; and that they are only to be accountable for their actual intromiſſions, and not for their omiſſions of any ſort; and that the ſaid truſtees ſhall only be liable each for their own actual intromiſſions, and not *in ſolidum* for the intromiſſions of one another, nor for the ſponſibility of the purchaſer, or purchaſers, and their cautioners, who are to give ſecurity for the price of ſuch part of the ſaid lands as ſhall be ſold, further than that they be habile and repute ſponſible men at the time, nor ſhall the purchaſer, or purchaſers, be concerned with the application of the price. *And it is alſo hereby expreſsly provided* and *declared*, that the lands and others above diſponed, ſhall not be ſubject, in any reſpect, to the proper debts of the ſaid truſtees, or any of them; and that the ſaid truſtees ſhall make juſt count and reckoning to me, my heirs and ſucceſſors, of their intromiſſions in virtue hereof; and ſhall be bound and obliged, as by their acceptance hereof they bind and oblige them, their heirs and ſucceſſors, that how ſoon the purpoſes hereof are fully implemented, by payment of the ſaid debts, ſpecified and contained

of their expences, and only to be accountable for their intromiſſions.

Proviſion, that the lands are not to be ſubject to the debts of the truſtees.

contained in the ſaid liſt, or any other juſt and lawful debts, due by me preceding the date hereof, and not therein contained, either to denude themſelves in favour of me, and my foreſaids, of ſuch parts of the lands and others above mentioned, as ſhall remain unſold, as ſaid is, in caſe any be, and to replace and reinſtate me and mine above written therein, as fully, in all reſpects, as if theſe preſents had never been made or granted, or account for the remainder of the price of the ſaid lands, after paying the ſaid debts, and neceſſary expences, as ſaid is. *And it is further* hereby *provided* and *declared*, that ſuch ſum or ſums, as ſhall be borrowed and applied by my ſaid truſtees in payment of my ſaid debts, is, and ſhall be as fully ſecured, as a debt affecting the ſaid lands and others, as if the ſaid ſum, or ſums, were ſpecially mentioned and enumerated in the foreſaid liſt, herein referred to; and the foreſaid truſtees ſhall have credit and allowance therefor, out of the firſt and readieſt of their intromiſſions, in virtue hereof. *And* it is further hereby expreſsly *provided* and *declared*, that the ſaid truſtees, accepters or accepter,

Proviſion, that the ſums borrowed ſhall be as fully ſecured as the debts before mentioned, and allowed out of the firſt of the intromiſſions.

Proviſion, that the truſtees may aſſume truſ-

accepter, and ſurvivors or ſurvivor of them, ſhall have it in their power, either to aſſume one or more truſtees, to be named by my creditors, at a general meeting of them, for all the purpoſes, and with all the powers therein contained; or, in caſe the ſaid creditors ſhall rather incline to have the truſt veſted in one or more men of buſineſs, of their own naming, *then*, and *in that caſe*, I hereby empower my ſaid truſtees, and accepters, or accepter, and ſurvivors, or ſurvivor of them, to diveſt themſelves of the ſaid truſt, in favour of the truſtee, or truſtees, ſo to be named by my ſaid creditors, and of all the powers therein granted; under which reſervations, conditions, proviſions, and declarations, theſe preſents are granted, and no otherwiſe. *And* I the ſaid A. B. with and under theſe reſervations, conditions, proviſions, and declarations, bind and oblige me, my heirs and ſucceſſors, upon my own proper charges, to infeft and ſeiſe the ſaid C. D. F. G. and J. K. in the lands, baronies, and others foreſaid; and that by two ſeveral infeftments and manners of holding, the one thereof to be holden of me and my heirs,

tees to be named by the creditors, or

diveſt in favour of men of buſineſs of their naming.

Obligement to infeft.

in

in free blench, for payment of a penny Scots yearly, upon the ground of the ſaid lands, if aſked only, at the term of Whitſunday, in name of blench farm, and the other of the ſaid infeftments, to be holden from me, of my immediate lawful ſuperiors thereof, as freely, in all reſpects, as I hold, or might hold the ſame myſelf; and that either by reſignation or confirmation, the one without prejudice of the other: *And* for obtaining the ſaid infeftment by reſignation, I hereby make and conſtitute

Procuratory of reſignation.

and each of them, jointly and ſeverally, my lawful and irrevocable procurators, for me, and in my name, in due form of law, to reſign and ſurrender, as I hereby, with and under the reſervations, conditions, proviſions, and declarations foreſaid, *reſign*, *ſurrender*, *upgive*, *overgive*, and *deliver*, *all* and *whole* the lands, baronies, and others particularly above written, and herein holden as repeated; together with all right, title, and intereſt, which I have, or can pretend thereto, any manner of way, *in the hands* of my immediate lawful ſuperiors, or their commiſſioners, having power to receive reſignations,

ſignations, and grant new infeftments, *in favour*, and for new infeftment of the ſame, to be made, given, and granted, to the ſaid C. D. F. G. and J. K. as my truſtees, for the purpoſes foreſaid; *acts*, inſtruments, and documents, one or more, in the premiſſes, to aſk, take, and receive, and generally every other thing to do in the premiſſes, which I might do, if perſonally preſent, or which to the office of procuratory, in ſuch caſes, belongs; promiſing to hold firm and ſtable, all and whatever my ſaid procurators ſhall lawfully do, or cauſe to be done, in the premiſſes. *And* I here- Aſſigna- to the writs
by *make* and *conſtitute* the ſaid truſtees, my lawful ceſſioners and aſſignees, *not only* in and to the whole writs and evidents of the lands, baronies, and others before diſponed, old and new, with the whole clauſes of warrandice, and other clauſes therein con- and rents.
tained; *but alſo* in and to the rents, maills, and duties of the ſaid lands, and others foreſaid, from and after the term of Whitſunday laſt, and in time coming during the ſubſiſtence of this truſt right, and in and to the ſeveral tacks granted by me to my tenants therein. *And* I *bind* and *oblige* me, Warran-
and dice.

and my foreſaids, to warrant the preſent right and diſpoſition of the ſaid lands, and alſo the aſſignation to the writs and evidents, to be good, valid, and ſufficient, and the ſaid lands to be free, ſafe, and ſure from all points, dangers, burdens, and incumbrances, at all hands, and againſt all deadly, as law will; and the aſſignation to the maills and duties, from my own proper facts and deeds only, *excepting* from the ſaid abſolute warrandice the foreſaid tacks; but with power to my ſaid truſtees to quarrel or impugn the ſame on any ground in law, which ſhall not infer double warrandice againſt me: *And* I oblige me to deliver up to the ſaid J. K. for behoof of my ſaid truſtees, the writs and rights of my ſaid lands, conform to an inventory thereof, *quamprimum*. *And*, in caſe any of my titles to the ſaid lands ſhall be found any how defective, *I* hereby *empower* my ſaid truſtees, upon my charges and expences, to do every thing proper and lawful for making up the defects; and I conſtitute my ſaid truſtees my attornies for that effect. *And I* hereby further *empower* my ſaid truſtees, to call meetings of my credi-

Exception of tacks.

Obligation to deliver up the writs.

Power to make up titles.

Power to call meetings of creditors.

tors

tors, if neceſſary, and to pay their ſeveral debts, they always producing legal documents of debt, and deponing upon the verity of the ſame, before a judge ordinary. *Provided* and *declared*, that albeit the foreſaid debts due by me are ſtated as juſt and true debts; yet, nevertheleſs, it ſhall be in the power of my ſaid truſtees, to challenge or impugn, and object againſt the ſaid debts, in whole, or in part, and to obtain the ſame ſet aſide, upon any ground of law or equity competent; *and*, in caſe any ſuch objection ſhall be made by my ſaid truſtees againſt any of my ſaid debts, or any difficulty ariſe about the execution of this truſt right, *I* hereby *empower* my ſaid truſtees to enter into a ſubmiſſion with ſuch creditor, or creditors, whoſe debts are objected to, and in general to ſubmit all queſtions, relative to the execution of the truſt-right, to an arbiter, or arbiters, to be choſen and agreed upon by the parties, to have the ſame amicably determined, *with power* to the ſaid truſtees, or their quorum, *but only* to appoint a factor, or factors, for uplifting the rents, maills, and duties of the ſaid lands and eſtate, and managing the

Proviſion, that the truſtees may object to the ſaid debts.

Power to enter into ſubmiſſions.

Power to appoint factors, and a caſhier.

other buſineſs thereof, *but alſo* to appoint a caſhier for uplifting the proceeds of the ſaid eſtate, and the price or prices of ſuch parts of the ſame as may be ſold, ſuch factor and caſhier always finding ſufficient caution to be accountable for their intromiſſions; *and* my ſaid truſtees are hereby empowered to allow ſuch factor and caſhier a ſuitable gratification for their trouble. *And* I hereby empower the ſaid truſtees to pay the expence of making up the truſt deeds, and taking infeftment upon the diſpoſition, and regiſtering the ſame, and of all other writings neceſſary to compleat the ſaid truſt-right: *And* I conſent to the regiſtration hereof, and of the precept of ſeiſine under-written, in the books of council and ſeſſion, or others competent for preſervation; and, if needful, that letters of horning, on ſix days charge, and all other execution neceſſary, may paſs on a decreet to be interponed hereto, in the uſual form; and thereto conſtitute my procurators: *Attour* to the end that the ſaid truſtees may be infeft and ſeiſed in the lands, baronies, and others foreſaid, I hereby deſire and require you

Power to allow the factors and caſhiers a gratification for their trouble; and to pay the expence of making up the truſt deeds and other writings. Regiſtration.

Precept of ſeiſine.

you, and each of you, conjunctly and ſeverally, as my bailies in that part, to the effect under-written, ſpecially conſtitute, that, on ſight hereof, ye paſs to the manor place of C. and there give and deliver heritable ſtate and ſeiſine, actual, real, and corporal poſſeſſion, to the ſaid C. D. F. G. and J. K. truſtees foreſaid, of *all* and *ſundry* the lands, baronies, and others foreſaid, here held as repeated *brevitatis cauſa*; *with* full power to the ſaid truſtees, and ſurvivers, or ſurviver of them, either to borrow ſuch ſums of money as may be requiſite for payment of my ſaid debts, and grant either their own perſonal ſecurity, or heritable ſecurity for the ſame upon the lands or others foreſaid; or, in their option, to ſell and diſpone, heritably and irredeemably, the whole, or ſuch parts or portions of the above lands, as may be neceſſary for payment of the above debts, and that either by private bargain, or public roup, after making timeous and proper intimation thereof in the Edinburgh newſpapers, and to grant diſpoſitions of ſuch parts as they ſhall ſo think proper to diſpoſe of, to the

Recapitulation of the powers of the truſtees, and of the proviſions and conditions.

the purchaſer, or purchaſers, containing all the uſual and neceſſary clauſes in diſpoſitions; with power alſo to aſſign to the purchaſer, or purchaſers, my abſolute warrandice herein before contained, and bind themſelves in warrandice from their own facts and deeds only, *and* with power to them to apply the ſums ſo to be borrowed, and the price or prices of the ſaid lands and others, when ſold, for payment of my ſaid debts, due to my ſaid ſeveral creditors, or of ſuch other debts preceding the date hereof, not contained in the ſaid liſt relative hereto, as any other creditors of mine ſhall produce vouchers of, or otherwiſe ſufficiently inſtruct: *But providing* and *declaring* always, as it is hereby expreſsly *provided*, that, as lands are at preſent ſelling very low, it ſhall not therefore be in the power of my ſaid truſtees to ſell the lands and others hereby diſponed, within the ſpace of three years from the date hereof, without the expreſs conſent in writing of me, and, in caſe of my death, of my heir, for the time, to ſuch ſale or ſales: But, after the expiry of ſaid three years, they are hereby fully empowered to ſell the

ſame,

ſame, without any ſuch conſent had or obtained. *And declaring* always, that, of the ſaid lands and others before diſponed, the lands in the pariſhes of —— and —— ſhall, in the firſt place, be ſold, and the proceeds of the ſame applied in payment of my ſaid debts; and, in caſe the price or prices thereof do not extinguiſh ſaid debts, then the remainder, or ſuch parts of ſaid lands as the ſaid truſtees ſhall think neceſſary for paying the reſidue of my ſaid debts, ſhall, in like manner, be ſold, as ſaid is. *And declaring* always, that the ſaid truſtees are to have allowance of all their neceſſary expences, and perſonal charges, in the management of ſuch truſt-right, and that they are only to be accountable for their own actual intromiſſions, and not for their omiſſions of any ſort, and each of them only for his own actual intromiſſions, and not *in ſolidum*, nor for the intromiſſions of one another, nor for the ſponſibility of the purchaſer or purchaſers, and their cautioners, who are to give ſecurity for the price, or prices, of ſuch parts of the ſaid lands as ſhall be ſo ſold, further than that they ſhall be habit and repute reſpon-

reſponſible for the time; nor ſhall the purchaſer, or purchaſers, be concerned with the application of the price. *And* it is hereby *provided* and *declared*, that the ſaid lands ſo diſponed ſhall not be ſubject, in any reſpect, to the proper debts of the ſaid truſtees, or any of them; *and* that the ſaid truſtees ſhall make juſt count and reckoning to me, or my foreſaids, of their intromiſſions, in virtue hereof, and ſhall be bound and obliged, as, by their acceptance hereof, they bind and oblige them, their heirs and ſucceſſors, that how ſoon the purpoſes hereof are fully implemented by payment of ſaid debts, ſpecified and contained in ſaid liſt, or any other juſt and lawful debts, due by me, and not therein contained, either to denude themſelves in favour of me, and my foreſaids, of ſuch parts of the ſaid lands as may remain unſold, as ſaid is, and to replace and reinſtate me and mine above written therein, as fully, in all reſpects, as if theſe preſents had never been granted, or account for the remainder of the price of the ſaid lands, after paying the ſaid debts, and neceſſary expences, as ſaid is. *And alſo*, it is hereby

provided

provided and *declared*, that ſuch ſum, or ſums, as ſhall be borrowed, and applied by my ſaid truſtees in payment of my ſaid debts, is, and ſhall be as fully ſecured, as a debt affecting the ſaid lands and others, as if the ſaid ſum, or ſums, were ſpecially mentioned and enumerated in the foreſaid liſt, herein referred to; and the foreſaid truſtees ſhall have credit and allowance therefor, out of the firſt and readieſt of their intromiſſions, in virtue hereof. *And* it is further hereby expreſsly *provided* and *declared*, that the ſaid truſtees, accepters, or accepter, and ſurvivors, or ſurvivor of them, ſhall have it in their power, either to aſſume one or more truſtees, to be named by my creditors, at a general meeting of them, for all the purpoſes, and with all the powers herein contained; or, if the ſaid creditors ſhall rather incline to have the truſt veſted in one or more men of buſineſs, of their own naming, *then*, and *in that caſe*, I hereby empower my ſaid truſtees, and accepters, or accepter, and ſurvivors, or ſurvivor of them, to diveſt themſelves of the ſaid truſt, in favour of the truſtee or truſtees, ſo to be named by my

ſaid

Continuation of the precept.

ſaid creditors, and of all the powers therein contained; and that ye give ſuch ſeiſine, by deliverance to the ſaid truſtees, or their certain attorney, or attornies, in their names, of earth and ſtone of the ground of the ſaid lands, at the manor place of C. which, by the charters and retours of the ſame, and particularly by a charter under the great ſeal, dated the —— day of —— ſealed —— in favour of the deceaſed J. B. of C. is declared to be a ſufficient ſymbol and ſeiſine for the whole of the ſaid lands, teinds, mills, and others, with the pertinents, though lying diſcontiguous, and of different denominations; and this in nowiſe ye leave undone: The which to do, I commit to you, jointly and ſeverally, my full power, by this my precept of ſeiſine, directed to you for that effect. *In witneſs*, &c.

Subſcription clauſe.

The two following clauſes are ſometimes inſerted in truſt diſpoſitions; the firſt is, indeed, frequently reſerved to be inſerted in the deed of acceſſion, as being more properly the act of the creditors; but the other, where the granter of the truſt-right has a mother and wife alive, ſeems neceſ-

ſary

ſary to be inſert in the truſt diſpoſition, and may come in immediately before the *obligement* to infeft.

'*And* becauſe I have thus deprived my- *Reſervation* of an aliment.
'ſelf of every means of ſubſiſtence, by 'diſponing my whole eſtate in favour of 'truſtees, with power to ſell for payment 'of my creditors, though it is almoſt cer- 'tain there will be a conſiderable reverſion 'due to me: *Therefore* theſe preſents are 'granted, with this further proviſion, as it 'is hereby moſt expreſsly *provided* and 'declared, that the acting truſtee for the 'time is, and ſhall be obliged, and the cre- 'ditors, by acceptation hereof, allow him 'to pay to me the ſum of ——— yearly 'for my aliment and ſubſiſtence, till the 'juſt and true extent of my debts, and the 'value of my funds be known; and then 'to augment or diminiſh my aliment, or 'take it totally away, according as my 'funds ſhall turn out. *And* I likewiſe *a-* Power to value the liferent annuity due to the granter's mother and wife, and pay the ſame.
gree and *empower* the truſtee, or truſtees, for the time, to value the liferent annuity and aliment due by me to my mother and wife, or with them to enter into ſub- miſſions, for that end; and, in caſe of

'the ſale of the ſaid lands, either to allow
'the purchaſer, or purchaſers, to retain
'ſum, or ſums, anſwerable to theſe liferen
'annuities and aliment; or, in caſe of va
'lues being put thereon, to pay them thei
'values or proportion of the price of m
'eſtate, anſwerable thereto, along with m
'other creditors: But, in the mean time
'until the ſale, the truſtees are hereby em
'powered to pay the ſaid liferent annuit
'to my mother, and my wife's alimen
'out of the rents.'

In caſe there is only either a mother o
a wife, the variation will eaſily be mad
from the above.

Sometimes the granter has works upo
his eſtate which yield a large yearly pro
fit, and his wife is provided in a jointur
out of the lands, by contract of marriage
in which caſe her conſent may be taken
and the diſpoſition goes on as in the fore
going example, to the diſpoſitive clauſe
which is thus: 'Do hereby, with conſen
'of —— my ſpouſe, *alienate*,' &c. and th
following clauſes are inſert: '*And reſer*
'*ving* to me my liferent right of the whol
'coal and ſalt works upon the ſaid land

Reſervation of a liferent of coal and and ſalt works,

'an

'and eſtate hereby diſponed, with the ſalt 'pans, and other houſes and engines, ne-'ceſſary for carrying on the ſaid coal and 'ſalt works; with power to me to ſet 'down ſinks, run aqueducts and levels, 'erect machines, and to do every thing 'neceſſary for working and carrying on 'the ſaid coal and ſalt works; *and reſer-* and of jointures.
ving to my —— mother her liferent right 'affecting the lands above diſponed, or any 'part thereof, *it* being hereby *declared*, 'that the ſaid —— my ſpouſe, her con-'ſent to the preſent right and diſpoſition, 'ſhall not import her paſſing from her life-'rent right and infeftment, provided by 'her contract of marriage, but that the 'ſame ſhall ſubſiſt nevertheleſs, in full 'force, in ſo far as may be extended to the 'ſum of —— of free annuity; to which 'ſhe hereby reſtricts the ſame: *And* with 'reſpect to which reſtricted annuity of '—— her foreſaid liferent infeftment ſhall 'ſtand in force, notwithſtanding of her 'conſent to theſe preſents; but with and 'under this condition and proviſion, that 'it ſhall be in the power of the ſaid truſ-

'tees,

'tees, when they ſhall think proper, to aug-
'ment the ſaid annuity of —— to any
'ſum they ſhall judge reaſonable, not ex-
'ceeding in whole an annuity of ——.

Power to aliment and provide for the heir and the younger children.

'*And moreover*, with power to the ſaid
'truſtees, after my deceaſe, to apply the
'rents, or free produce of the coal and ſalt
'works, upon the ſaid lands, or ſuch parts
'thereof as they ſhall judge proper, for ali-
'ment of the heir, until he ſhall attain the
'age of twenty-one years complete; and
'upon the heirs becoming major, or being
'married, to apply ſuch part of the produce
'of the coal and ſalt as the ſaid truſtees ſhall
'judge proper, for proviſion and ſubſiſt-
'ence of the heir, not exceeding the ſum
'of —— yearly; *with power* alſo to my
'ſaid truſtees, after my deceaſe, to allo-
'cate ſuch ſum yearly out of the pro-
'duce of the ſaid coal and ſalt as they
'ſhall judge proper for the aliment and
'education of my younger children; and
'the reſidue thereof, if any ſhall be, ap-
'plied towards payment of the ſaid debts
'if any part of them ſhall then remain un-
'paid.'

If all the other proviſions are repeated in the precept, the above muſt alſo be ſhortly repeated.

As the execution of truſt-deeds frequently requires conſiderable ſkill in the law, and is attended with much calculation, it has been cuſtomary, for ſome time paſt, to execute them in favour of accountants; an example of one of that kind is therefore added, containing alſo a few other variations from the preceding form.

Truſt Diſpoſition to Accountants.

—to accountants.

I, A. B. of C. *conſidering* that I am indebted to my creditors after named the reſpective debts and ſums of money under-written, viz. to —— the ſum of —— Sterling; to ——, &c. and which were all borrowed and contracted for my own and my father's behoof; and that I am alſo debtor to my creditors for intereſt reſting upon the ſaid principal ſums due to them;

Granter. Conſideration.

them; and that I am alſo bound, along with R. S. of T. in the ſum of ——:— *Therefore*, and for further ſecurity, and more ready payment of the ſeveral debts due to my creditors before named, or to any others my juſt and lawful creditors, who may poſſibly be here omitted, and whom the truſtees after named ſhall aſſume into the benefit of this diſpoſition, by virtue of the powers hereby committed to them, as well ſuch as are my own proper debts, as thoſe in which I ſtand bound as ſurety and cautioner for others. *And* for preventing the charges and expences they might be put to in doing legal diligence for the ſame, I the ſaid A. B. being willing to grant the following right and diſpoſition, purſuant to, and in compliance with the deſire of my creditors, ſignified at a meeting of them, *do* hereby *alienate*, *diſpone*, and *convey*, to and in favour of C. D. F. G. and H. I. and J. K. all accountant in E. and to ſuch other perſons as may hereafter be named and appointed by my ſaid creditors, by the powers hereby committed to them, as truſtees for, and to the uſe and behoof of my creditors before named,

Diſpoſitive.

Truſtees.

named, and of any other my juſt and lawful creditors herein omitted, whom the ſaid truſtees ſhall aſſume into the benefit of this diſpoſition; that is to ſay, of the ſaid four truſtees above named the ſaid C. D. ſhall have the ſole power, in the firſt place, by himſelf alone, to manage and execute the ſaid truſt, without the conſent of the other truſtees, in the ſame manner as if he had been named the ſole truſtee; and, in caſe of his death, not acceptance, or that he ſhall denude of the ſaid truſt, then the ſaid F. G. ſhall, in the next place, have the ſole power to execute the ſame; and, in caſe of his death, not accepting, or denuding, then the ſaid H. I. ſhall have the ſole power to execute the ſame; and, in caſe of his death, not accepting, or denuding, then the ſaid J. K. ſhall have the ſole power to execute the ſame; and, in caſe of his death, not acceptance, or denuding, then the right to the lands and others hereby diſponed, and the adminiſtration and management, ſhall be veſted in, and committed to any one or more truſtees who ſhall be named and appointed by the majority of my ſaid creditors, in manner herein

Order of acting.

herein appointed, and hereafter mentioned; and which truſtees, ſo to be named by my ſaid creditors, ſhall have the ſame rights and powers as if they had been ſpecially named and appointed by me the ſaid A. B. myſelf; **Lands.** *all* and *whole* the lands and baronies particularly after mentioned, viz. (here take them in), and with and under the conditions and proviſions, and to the ends and purpoſes following, viz. *firſt*, *Providing* and *declaring* always, as it is hereby ſpecially *provided* and *declared*, that the ſaid diſpoſition is granted by me the ſaid A. B. with power to the ſaid C. D. or other truſtee acting in the order before mentioned, to ſell and diſpoſe of the whole, or ſuch parts or portions of the lands and others hereby diſponed, as may be neceſſary for payment of my debts, either by private ſale, or public voluntary roup, and by wholeſale or parcels, and on ſuch conditions, and at ſuch prices, as he ſhall think fit, my conſent, if alive at the time, being always firſt obtained to ſuch ſale, or ſales, if made within the ſpace of three years from the date of theſe preſents; but thereafter, without any further advice or conſent

Proviſion and declaration 1ſt. *Power* to the acting truſtee to ſell, &c.

ſent of me the ſaid A. B. or of the other truſtee or truſtees before named, and public notice being always given by advertiſements in the Evening Courant, Caledonian Mercury, and Edinburgh Advertiſer, or other Edinburgh newſpapers in uſe at the time, that the ſaid lands are to be ſold, for ſuch ſpace of time, before the time of actual ſale, as the ſaid truſtee ſhall think proper and neceſſary; and with power to the ſaid truſtees to receive payment of the prices, or to take bonds for payment of the ſame, from the purchaſers, with one or more cautioners reputed reſponſible at the time: *But declaring* always, that of the ſaid lands and others hereby diſponed, the lands in the pariſhes of —— and ——, ſhall, in the firſt place, be ſold, and the proceeds of the ſame applied for payment of the ſaid debts; and, in caſe the price thereof does not extinguiſh the ſaid debts, then the remainder, or ſuch parts of the ſaid lands as the ſaid truſtees ſhall think neceſſary for paying the reſidue of my ſaid debts, ſhall, in like manner, be ſold, as ſaid is, the houſe, office-houſes, gardens, and policy of C. and the following lands

immediately about and connected with the ſame, being hereby conditioned and provided to be the laſt of the ſaid eſtate to be ſold, viz. (here inſert them); *and* with power to the ſaid truſtees to eſtabliſh and make up, in my perſon, all neceſſary titles to any lands or heritages belonging to me. *And*, for rendering effectual ſuch ſale or ſales, with power to the ſaid truſtees to grant diſpoſitions, diſcharges, and other writings neceſſary, with all clauſes needful to the purchaſers of the ſaid lands, and that ſimply, ſo as that the purchaſer ſhall nowiſe be concerned with the application of the prices thereof, nor be burdened or affected with any of the conditions or proviſions herein contained, but ſhall only be obliged to pay their reſpective prices to the ſaid truſtee, acting in the order above mentioned for the time, or to any factor who ſhall be nominated and appointed by him, or to my ſaid creditors, in ſuch manner as the ſaid acting truſtee ſhall direct.

2*dly*, Power to remove tenants and ſet tacks.

Secondly, With power to the ſaid C. D. or other truſtee, acting in the order above mentioned for the time, to output and input tenants, and to grant tacks, at ſuch rents

and

and for ſuch ſpaces, as he ſhall think fit, the ſame not exceeding the ſpace of —— years, *excepting* always from the ſaid power of ſetting, the ſetting for paſture in graſs the woods and plantations, but with power to thin and cut the woods in hags, as has been formerly uſed to be done; but without prejudice to the ſaid truſtees their ſelling the whole of any woods ready for cutting and ſale, excepting the woods and plantations on the foreſaid lands about the houſe of C. particularly above deſcribed and conditioned, to be the laſt of the ſaid eſtate to be ſold; and alſo excepting from any leaſes the following lands or farms preſently in my own natural poſſeſſion, viz. (here inſert them), which the ſaid truſtees are hereby only empowered to ſet in graſs from year to year, or for three years ploughing: *And reſerving* always to me the ſaid A. B. the poſſeſſion of the houſe, office-houſes, and garden of C. while they and the lands contiguous to them are unſold; and power to me, ſo long as the ſaid lands, now in my own natural poſſeſſion, are not ſold, to enter again to the poſſeſſion of two or three hundred acres of the ſame, lying

Exceptions.

lying moſt convenient for me, at ſuch an yearly rent as ſhall be put on the ſaid two or three hundred acres, by two neutral perſons, one named by me, and another by my ſaid truſtees; my entry to ſuch lands as may happen to be ſet in ploughing, commencing at the expiry of the three years for which the ſame is ſet; I the ſaid A. B. giving always at leaſt ſix months previous notice to my ſaid truſtees, of my intention of entering on ſaid poſſeſſion, and the like notice before leaving it. And alſo, with power to the ſaid truſtee to enter and receive the vaſſals in ſuch of the ſaid lands as are holden under me, and to nominate and appoint, change, output and input factors, from time to time, with ſuch powers, and liable to ſuch diligence, as he ſhall think proper for recovering the rents, maills, and duties, of the lands and others hereby diſponed, and prices thereof, when ſold; with power alſo to the ſaid acting truſtee, to nominate and appoint, output and input a caſhier, or receiver-general, for receiving the rents from the factors, and for applying the ſame to the payment of the intereſt of the debts due by me, and

other-

otherwiſe as the ſaid truſtee ſhall, from time to time, ſee cauſe to direct; and alſo to nominate and appoint a clerk to himſelf, and to give ſuch ſalaries to ſuch factor, caſhier, and clerk, and ſuch gratifications to any other perſons who ſhall be employed by him, in relation to the premiſſes, as the ſaid truſtee ſhall think proper, and to ſtate and fit accounts with the ſaid factors and caſhiers, and to allow and diſallow of the articles of diſcharge as he ſhall think juſt and reaſonable; and, upon payment of what ſhall be found due, to exoner and diſcharge them of their reſpective intromiſſions and management. *Thirdly*, With power to the ſaid C. D. or other truſtee acting in the order above mentioned for the time, either to compone, tranſact, and agree, or to ſubmit and refer any queſtions, diſputes, debates, or differences, that may ariſe betwixt them and any other perſon, or perſons, touching the execution of the ſaid truſt-right, whether with relation to any titles to the lands, heritage, and others hereby diſponed, with the debts due by me, or any other thing the ſaid truſtee may think proper, of and concerning the premiſſes

3*dly*, Power to agree and ſubmit.

premiſſes in any ſort; which tranſactions and ſubmiſſions, with the decreet-arbitral, one or more, to follow thereon, are hereby declared valid and ſufficient, to all intents and purpoſes whatever: As alſo, with full power to him to ſue and inſiſt in ſuch actions, and to do every thing neceſſary, for effectually ſecuring the ſaid creditors, and obtaining them payment of their debts.—

4*thly*, Power to aſſume creditors into the benefit of the truſt.

Fourthly, It is hereby *provided* and *declared*, that it ſhall be lawful to, and in the power of the ſaid C. D. or other truſtee, acting in the order above mentioned, for the time, to aſſume, and he ſhall even be holden and obliged to aſſume, into the benefit of this right and diſpoſition, ſuch perſon, or perſons, as ſhall appear to have been, at the date hereof, true, juſt, and lawful creditors to me, in any debt, or debts, beſides, or greater than thoſe herein ſpecially enumerated, ſo as ſuch a proportional part of the ſubjects herein contained, and produce thereof, as correſponds to the reſpective debts due to them, may be communicated to them, as fully as if they had been originally named in the ſaid truſt; *providing* ſuch creditors do produce their grounds

grounds of debt, and claim the benefit of ſuch aſſumption, within twelve months from the advertiſement of the truſtee to the ſaid creditors to produce their grounds of debt.—*Fifthly*, It is further *provided* and *declared*, that this my diſpoſition to the ſaid truſtees ſhall not import, or be conſtrued, or underſtood, ſo as to prefer any one creditor to another; or to poſtpone, or annul, the rights and diligences of any creditor already done or acquired; but that the creditor's preference among themſelves ſhall remain unhurt and not prejudged, in the ſame way and manner as if theſe preſents had never been granted. —*Sixthly*, It is further *provided* and *declared*, that the mention made of the ſums due by me, to the perſons named in the narrative hereof, ſhall not import that ſuch ſums are truly due, unleſs they ſhall be ſufficiently inſtructed; and that it ſhall be lawful for me, or the ſaid truſtees, or the other creditors themſelves, to quarrel the ſame *hinc inde*, upon any ground of law, all exceptions competent being ſaved, not only againſt the original grounds of debt, but alſo againſt all diligence uſed, or additional

5thly, Proviſion that the truſt right ſhall not hurt the preferences of the creditors among themſelves.

6thly, Power to the truſtees or creditors to object to debts.

tional ſecurities obtained by or granted to any of the ſaid creditors, or otherwiſe, as accords of the law: And, on the other hand, the acceſſion of the ſaid creditors to this truſt-right ſhall nowiſe infer an acknowledgment, on their part, that there are no further or greater ſums due to them than what are therein ſtated.—*Seventhly*, It is further *provided* and *declared*, that the ſaid creditors, or any of them, ſhall nowiſe, by their acceding or accepting of the ſaid right, be hindered, or prejudged, of or from any action competent to be uſed, at their inſtance, againſt any perſon, or perſons, bound with or for me, in payment of any of the debts due by me to them: But that, notwithſtanding of this truſt-right, and their ſaid acceptance, it ſhall be in their power, at any time they think fit, to uſe all manner of diligence, real or perſonal, for payment of the debts owing to them againſt ſuch co-obligants as accords of the law.—*Eighthly*, It is further *provided* and *declared*, that this diſpoſition is granted for and to the ſpecial end and effect that the ſaid C. D. or other truſtee, acting in the order above mentioned for the

7thly, Proviſion that the truſt right ſhall not hurt the claims of the creditors againſt cautioners and co-obligants.

8thly, Uſes for which the truſt right is granted.

the time, may apply the prices of the lands and others hereby diſponed, and rents thereof, preceding the purchaſer's entry, after deduction of the public burdens affecting the ſaid eſtate, and of all neceſſary charges and expences, to be deburſed by him, or his factors, in executing the ſaid truſt, and of ſuch ſalaries and gratifications as he ſhall give to factors, caſhiers, lawyers, arbiters, or others, who ſhall be employed with relation to the management of ſaid truſt; and, after a ſuitable gratification to the ſaid acting truſtee, or truſtees, for payment to my ſaid creditors before named, and to any others my creditors omitted to be named herein, who ſhall afterwards be aſſumed into the benefit hereof, of the debts reſting owing by me to them, and that according to their ſeveral rights and preferences, conform to a ſcheme of diviſion to be made thereof among my ſaid creditors, according to their reſpective rights and intereſts, duly authoriſed by the ſaid truſtee, acting in the order above mentioned for the time; and, after deduction of payment of the ſaid debts, as ſaid is, that the ſaid truſtee ſhall

make payment to me the ſaid A. B. or my heir, who would ſucceed to my heritable eſtate, or to any other perſon, or perſons, to whom I ſhall direct the ſame to be paid by a writing under my hand, at any time in my life, of the reſidue of the ſaid funds if any ſhall remain; and ſhall convey and rediſpone to me, and my foreſaids, the remainder of the ſaid lands and eſtate, in caſe any part thereof ſhall remain unſold, and the balances, if any due, by purchaſers, or factors, with warrandice from his facts and deeds only. And to prevent any diſpute concerning the gratifications to be given to the ſaid C. D. or other truſtees who ſhall execute the ſaid truſt, it is hereby declared that the ſaid gratification ſhall be aſcertained by L. M. N. O. P. Q. and R. S. all ——— or any three of them, who are named as a committee to the ſaid creditors, with whom the acting truſtee may adviſe, from time to time, if he ſhall ſee fit; whom failing, to any other committee to be named by the ſaid creditors, or their quorum.—*Ninthly*, it is further *provided* and *declared*, that each creditor, before drawing payment of his debt, or his pro-

9thly, Creditors ſhall not only depone to

portion

portion of the funds contained in this truſt-right, when converted into money, ſhall be obliged, in caſe the truſtee require him, *not only* to depone upon the verity of his debt before ſuch truſtee, or before any juſtice of the peace, or judge ordinary; *but alſo* ſhall be obliged to aſſign and make over his ſaid debt, to the truſtee acting in the order above mentioned for the time, or to any other perſon in whoſe favours the ſaid truſtee ſhall direct the ſame to be done, with abſolute warrandice, to the extent of the ſums to be by them received; to the end the ſame, if thought needful, may be made uſe of as a further ſecurity of the lands and others hereby diſponed and made over.—*Tenthly*, It is further *provided* and *declared*, that when any ſcheme of diviſion of the prices, or produce of the whole, or any part of the ſubjects hereby diſponed, is made out and ſigned, the truſtee acting for the time ſhall be bound to advertiſe the ſame, twice in the Evening Courant and Caledonian Mercury, or any other Edinburgh newſpapers in uſe for the time, thirty days before the time of payment of ſuch dividend; and, if any

the verity of their debts, but convey them to the truſtee, or to any perſon he ſhall direct on their receiving payment.

10*thly*, After a ſcheme of diviſion is made out and advertiſed, if any creditor ſhall refuſe payment, the truſtee may conſign the ſame.

any of the creditors ſhall neglect to de-
mand, or ſhall refuſe to take payment o
their ſhares, or dividends of the funds, a
the time advertiſed, and to grant the diſ
poſitions, diſcharges, renunciations, or o
ther writings, which the acting truſtee fo
the time ſhall have appointed to be grante
by them on their receiving ſuch dividend
or that any of the creditors ſhall be legall
incapacitated to receive their payment, o
ſhares, through abſence, minority, or other
wiſe; then the acting truſtee for the tim
ſhall have full power to cauſe conſign th
ſums due to, or ſhares and dividends o
ſuch creditors, in the Bank of Scotland, o
Royal Bank of Scotland, there to lie on th
riſk, and for behoof of ſuch creditor, t
be taken up by them from ſaid Bank, upo
ſuch conditions, and upon granting ſuc
writs, as the acting truſtee for the tim
ſhall have appointed to be performed an
granted.—*Eleventhly*, It is hereby *provide*
and *declared*, that in caſe the ſaid C. D. o
other truſtees acting for the time, ſhall no
have ſold and diſpoſed of the lands and o
thers hereby conveyed, within the ſpace o
five years, from the date of theſe preſents

tha

11*thly*, If the truſtee ſhall not have ſold the lands within five years, the creditors may com-

that then, and *in that* caſe, it ſhall be in the power of the ſaid creditors, or the majority of them, according to the extent of their principal ſums, who, by themſelves, or their lawful procurators, ſhall meet and convene, at a meeting to be called for that purpoſe, after advertiſement in the Evening Courant and Caledonian Mercury, or other Edinburgh newſpapers in uſe for the time, three ſucceſſive weeks, to require and compel, if they ſhall think fit, the acting truſtee for the time to denude, or give up all management, in virtue of this truſt-right; and which the ſaid acting truſtee ſhall accordingly be holden and obliged to do, in favour of the other truſtees above named, in the order before mentioned; and, failing of them, in favour of any other truſtee to be named by my ſaid creditors, or majority of them, according to the extent of their principal ſums, and not *per capita*, or according to the number of names convened at a meeting, after due advertiſement as aforeſaid; and the acting truſtee, who, after being required under form of inſtrument, by a notary and witneſſes, perſonally, or at his dwelling-place, ſhall not

pel him to denude, or he may denude of his own accord.

not have denuded and quitted the management of ſaid truſt, within two months after requiſition, ſhall then, for ſuch refuſal or delay, forfeit any reward he might have been entitled to for his former trouble, and ſhall alſo be liable in all expences that may be laid out in compelling him to denude: And, on the other hand, if the acting truſtee for the time ſhall, from his bad health, or other circumſtances, be rendered unable to carry on the truſt; or if the truſt ſhall not be fully executed within the ſpace of five years from the date hereof, it ſhall then be in the power of the ſaid truſtee acting for the time, to denude of the ſaid truſt, or any part of the ſame remaining unexecuted, in favour of the next immediate truſtee willing to act, or in favour of any other truſtee to be named by my ſaid creditors, or majority of them, according to the extent of their principal ſums as aforeſaid, ſuch truſtee always advertiſing his reſolution to give over the truſt, in the two Edinburgh newſpapers in uſe for the time, for three ſucceſſive weeks, and making juſt count, reckoning, and payment, for any intromiſſions he may have

have had in virtue hereof, to the next acting truſtee, who is hereby authoriſed and empowered to ſettle and fit the former truſtee's accounts, and to allow him ſuitable gratifications for his trouble during his adminiſtration, whether he ſhall demude, at his own deſire, or the deſire of the creditors, and fully and abſolutely to diſcharge him of the ſaid truſt, and of all his intromiſſions and management in conſequence hereof.—*Twelfthly*, It is *provided* and *declared*, that, in caſe of the deceaſe of any of the truſtees before named, who ſhall have acted in virtue of the powers given to them by theſe preſents, it ſhall be competent and lawful to the ſaid truſtees, or any of them acting in the order before mentioned for the time, to call the repreſentatives of any ſuch deceaſed truſtee, and the factors, or caſhiers, named by them, to account for any intromiſſions that may have been had by them in virtue hereof, and, if neceſſary, to call and purſue therefor as accords, and, on payment, to exoner and diſcharge them; which diſcharge ſhall be as valid and effectual, to the repreſentatives of ſuch deceaſing truſtee, and his factors,

12*thly*, The acting truſtee may call to account the repreſentatives of a deceaſed truſtee, and the factors and caſhier named by him.

factors, as if the ſame were granted by me and my whole creditors.—*Thirteenthly*, I is *provided* and *declared*, that, albeit the ſaid truſtee ſhall fail to accept, or ſhall die before the execution of this truſt, yet, nevertheleſs, the ſame ſhall nowiſe ceaſe or become void therethrough: But this truſt right, and the infeftment to be taken in virtue hereof, and all that might follow thereon, ſhall ſtand and ſubſiſt as a ſecurity to my ſaid creditors above named, and any others of my juſt and lawful creditors preceding the date hereof, who have been omitted to be named herein; and it ſhall be competent and lawful to my ſaid creditors, or major part of them, according to the extent of their principal ſums, and not *per capita*, or according to the number of names preſent at a general meeting, to be called for that purpoſe, upon advertiſement in the Edinburgh Evening Courant or Caledonian Mercury, or other Edinburgh newſpapers in uſe for the time, three ſucceſſive weeks, or circular letters, to chooſe, from time to time, ſuch a number of truſtees for executing the truſt before mentioned as they ſhall think proper; and which truſtees

13*thly*, The truſt-deed ſhall ſubſiſt as a ſecurity, tho' the truſtees ſhall fail to accept, or die before executing it.

truſtees, ſo to be named by the ſaid creditors, ſhall be as fully inveſted in the right of the whole lands and others, conveyed by the ſaid diſpoſition, and in all the powers thereby committed to the truſtees before named, as if they had been hereby expreſsly named and appointed truſtees, or as the truſtees herein named might or could have done, had they lived to execute the truſt before committed to them; with power alſo to the ſaid creditors, or major part of them, at ſuch meeting, to appoint what number of truſtees ſo to be named by them as ſhall be reckoned a quorum; and which truſtees ſo to be named by the ſaid creditors, or their quorum acting for the time, are empowered to call the repreſentatives of former truſtees to account for the intromiſſions of their predeceſſors, and of their factors, who may have been appointed by them, and to ſtate, fit, and clear accounts with them, and, if need be, to call and purſue therefor as accords; and, upon payment, receipts and diſcharges to grant, ſubſcribe, and deliver, which ſhall be as valid, effectual, and ſufficient, to all intents and purpoſes, as if the ſame had been

granted by me and my ſaid creditors. *As alſo*, it is hereby further *provided* and *declared*, that the ſaid C. D. or other truſtees herein named, or to be named by my ſaid creditors, ſhall nowiſe be obliged to do diligence other than as he ſhall think fit, nor ſhall he be liable for omiſſions, but allenarly for his own actual intromiſſions; nor ſhall the ſaid truſtees be liable *in ſolidum*, or for one another, even for ſuch their actual intromiſſions, but only each of them for himſelf, and his own actual and perſonal intromiſſions allenarly; nor ſhall they be further liable for their factors and caſhiers, from time to time to be named by them, than that they ſhall be habite and repute reſponſible at the time of entering upon their office. *As alſo*, it is hereby *provided* and *declared*, that the perſon, or perſons, who ſhall happen to purchaſe the ſaid lands, with the pertinents hereby diſponed, or any part thereof, from any of the foreſaid truſtees acting for the time, ſhall not be obliged to repeat in the rights and infeftments to follow in favour of the purchaſer, any of the above mentioned conditions and proviſions, as the ſame re-

lat

late only to the execution hereof, and do by no means concern the purchaſer: *With* and *under* the burden of which proviſions and conditions, theſe preſents are granted, and no otherwiſe. (Then follow *obligement* to infeft, by two ſeveral infeftments and manners of holding, *a me, et de me*; *procuratory of reſignation*; 'in favour and 'for new infeftment thereof, to be made, 'given, and granted to the ſaid C. D. F. 'G. H. J. and J. K. or to ſuch other per-'ſons as may hereafter be named and ap-'pointed by my ſaid creditors, purſuant to 'the powers hereby committed to them, in 'the order before mentioned, as truſtees 'for, and to the uſe and behoof of my 'ſaid creditors before named, and any o-'ther my juſt and lawful creditors herein 'omitted, whom the ſaid truſtees may 'hereafter aſſume into the benefit hereof, 'by virtue of the powers committed to 'them; but always with and under the 'conditions and proviſions above mention-'ed.' *Aſſignation to the writs and rents*, and *warrandice*.—It will be unneceſſary to inſert the *power to appoint factors*, or *procuratory for making up titles*, &c. theſe clauſes

Obligement to infeft.

Procuratory of reſignation.

Aſſignation to the writs and rents. Warrandice.

clauſes being taken in above. Then follows *obligement to deliver the writs, clauſe of regiſtration, precept of ſeiſine*, for giving ſeiſine of the lands and others 'to the ſaid 'C. D. F. G. H. J. and J. K. or to ſuch 'other perſons,' &c. and may refer ſimply to the conditions and proviſions; 'but al-'ways with and under the conditions and 'proviſions above mentioned;' without repeating them as in the preceding example.)

Delivery of the writs.
Regiſtration.
Precept of ſeiſine.

Deed of acceſſion thereto by the Creditors.

Deed of acceſſion.

Parties. We ſubſcribers, creditors of A. B. of C. or agents for, and having power to the effect after mentioned, from the creditors of the ſaid A. B.; and I the ſaid A. B. for myſelf, and for all right and intereſt I have in the matters after mentioned: *Conſidering* that the ſaid A. B. by his diſpoſition, bearing date the —— day of ——— has *alienated*,

Recital.

alienated, *diſponed*, and *conveyed*, to C. D. F. G. H. J. and J. K. all accountants in Edinburgh, and to ſuch other perſons as may be hereafter named and appointed by virtue of the powers thereby granted, as truſtees for, and to the uſe and behoof of the creditors of me the ſaid A. B. particularly ſpecified in the ſaid diſpoſition, and of any other juſt and lawful creditors therein omitted, whom the ſaid truſtees ſhall aſſume into the benefit of the ſaid diſpoſition, by virtue of the powers thereby committed to them; of which four truſtees before named, the ſaid C. D. is, by the ſaid diſpoſition, declared to have the ſole power, in the firſt place, by himſelf alone, to manage and execute the ſaid truſt, without the conſent of the other truſtees, in the ſame manner as if he had been named ſole truſtee; and, in caſe of his death, not acceptance, or that he ſhall decide of the ſaid truſt, then the ſaid F. G. is to have the ſole power, in the next place, to execute the ſaid truſt; and, in caſe of his death, not acceptance, or deciding of the ſaid truſt, then the ſaid H. is to have ſole power to execute the ſame;

ſame; and, in caſe of his death, not accep-
tance, or denuding of the ſaid truſt, ther
the ſaid J. K. is to have the ſole power t
execute the ſame; and, failing the ſai
whole four truſtees, then the right of th
lands and others thereby diſponed and con
veyed, and the adminiſtration and manage
ment thereof, is veſted and committed t
any one, or more truſtees, who ſhall, fro
time to time, be named and elected by th
majority of the reſpective creditors of m
the ſaid A. B. in manner particularly men
tioned in the ſaid diſpoſition; and whic
truſtees, ſo to be named by my ſaid credi
tors, ſhall have the ſame rights and powe
as if they had been ſpecially named an
appointed by me the ſaid A. B. *all* an
whole the lands and baronies of ——
and other lands and heritages particular
deſcribed in the ſaid diſpoſition, granted b
me the ſaid A. B. *but in truſt* for the uſe
ends, and purpoſes, with the powers, an
under the burdens, conditions, and prov
ſions, ſpecified in the truſt diſpoſition be
fore mentioned. *And that* we the ſaid cr
ditors are ſatisfied, that the foreſaid diſpo
ſition and truſt-right, is the moſt ſpeed
an

nd leaſt expenſive method of making ef-ectual the funds of our payment, and for viding and paying the ſame to us; and hat we are deſirous that all differences that ay ariſe among us, either with reſpect to he claims which we may ſeverally have gainſt the ſaid A. B. or with reſpect to he method of ranking us upon the ſub-ects ſo conveyed, may be ſettled in an a-icable manner, and that joint meaſures ay be followed by us, *do therefore not ly accede* and *agree to*, *ratify* and *approve* f the foreſaid truſt-right, and diſpoſition ranted by the ſaid A. B. and whole pow-rs thereby committed to the ſaid truſtees, n the whole heads, articles, and clauſes herein contained; *and conſent* that the ame take effect to all intents and purpoſes, nd hereby *bind* and *oblige* us, and thoſe ho may hereafter have right to our re-pective debts, to conform thereto, and to he proceedings to be had in purſuance hereof, in every reſpect as we are ſeveral-y concerned. *But alſo* we the ſaid credi-ors, and agents for creditors, hereto ſub-cribing, and I the ſaid A. B. for my right nd intereſt, *do* all hereby, for ourſelves reſpec-

Acceding clauſe.

Clauſe of ſubmiſſion to the ar-biters.

reſpectively, and our heirs, executors, and ſucceſſors, *ſubmit* and *refer* to the ſaid C. D. whom failing, to the ſaid acting truſtee, or truſtees for the time, in virtue of the foreſaid truſt-right, as arbiter or arbiters, all claims, debts, and demands, which we the ſaid creditors reſpectively have againſt the ſaid A. B.; *with full power* to the ſaid C. D. and failing him, by renunciation or deceaſe, to the ſaid truſtee or truſtees, acting in the order above mentioned for the time, to determine the extents of the ſeveral debts due by the ſaid A. B. to his creditors, and to rank and prefer the ſeveral creditors upon the funds ſo diſponed and conveyed to them as aforeſaid, and free produce thereof, and to take the oaths of the ſaid ſeveral creditors upon the verity of their debts, and all other probation neceſſary for inſtructing the claims of the ſaid creditors reſpectively; and to give furth and pronounce decreets-arbitral, one or more, upon the matters hereby ſubmitted, determining the ſaid whole matters, or even any part thereof, without being obliged to wait the final determination; and which partial decreets are here-

by

by declared to be final, ſo far as concerns the matters thereby determined: *And* for the better diſpatching of ſuch matters as are hereby ſubmitted, to give notice by ſuch public advertiſement in the Edinburgh Evening Courant and Caledonian Mercury, or other Edinburgh newſpapers in uſe for the time, or otherwiſe as he ſhall think proper, to the parties concerned, to give in their ſeveral claims and vouchers thereof, and to depone upon the verity of their debts, if the ſaid C. D. ſhall think proper, at ſuch time or times as he ſhall appoint. *And* we hereby *conſent* and *agree*, that in caſe any of us the ſaid creditors ſhall fail to produce our ſeveral claims and vouchers thereof, and to depone upon the verity of the ſame, within ſix months after the time appointed by the ſaid arbiters, that then, and in that caſe, it ſhall be lawful to the ſaid arbiter or arbiters, to proceed in the ſaid ranking, and to prefer the creditors whoſe claims and vouchers are produced, and who ſhall have deponed upon the verity thereof, *primo loco*, and preferable to ſuch other of the ſaid creditors as ſhall have ſo failed, to produce their claims and

vouchers thereof, or to depone upon the verity of the ſame, and to divide the funds accordingly among the creditors who ſhall have been ſo ranked and preferred, *primo loco*, to the extent of their reſpective debts; and to rank the other creditors who ſhall have ſo failed to produce or depone, *ſecundo loco* only, and to ſtate the debts due to them as in the truſt-right and diſpoſition before recited, or according to the beſt information he can procure, without delaying the diviſion, and to make out ſuch ſchemes of diviſion, from time to time, as may be neceſſary for dividing the rents of the ſaid lands, and prices thereof, when ſold, or other funds that ſhall be recovered at the time among the ſaid creditors, who are to be paid conform to the decreets of ranking, and ſchemes of diviſion, to be pronounced and made, from time to time by the ſaid truſtee, or truſtees, acting in the order above mentioned for the time as arbiter or arbiters foreſaid; *and whatever* the ſaid C. D. and failing him, by renunciation or deceaſe, the other acting truſtee or truſtees for the time, ſhall determine and appoint, *we* the ſaid creditors

and

and *I* the ſaid A. B. for our reſpective rights and intereſts, in the matter above ſubmitted, *do* hereby *bind* and *oblige* us reſpectively, our heirs, executors, and ſucceſſors, to obſerve and fulfil, and that under the penalty of —— pounds Sterling, to be paid by each of the parties refuſing to fulfil, over and above performance. *And* we, for our reſpective intereſts, do hereby conſent and agree, that this preſent ſubmiſſion ſhall ſubſiſt and continue until the whole matters hereby ſubmitted are finally determined and ended. *And further*, we hereby empower and authoriſe the ſaid C. D. and failing him, the other truſtee, or truſtees, acting for the time, in the order above mentioned, to enter into ſubmiſſions, to ſuch arbiter or arbiters as they ſhall think proper, for determining all claims or demands that may be moved by any other of the creditors of the ſaid A. B. who ſhall refuſe to accede to the ſaid truſt diſpoſition, and who ſhall take ſeparate meaſures for diſputing or competing with us, in relation to the funds of the ſaid A, B. or for determining any claim that may be moved by any other perſon or perſons whomſoever, to

Power to the truſtee to enter into ſubmiſſion with creditors not acceding.

to the ſaid funds, or any part thereof; and to fulfil and perform, in our names, whatever ſhall be decerned to be done by the decreet or decreets arbitral to be pronounced therein, and to receive and exact payment and performance of what ſhall be decerned on the other part in our favours: *As alſo*, to ſue for reduction and improbation of any rights, debts, and diligences, which may compete with us concerning the foreſaid funds and incumbrances affecting the ſame; and to defend us in all actions that may be brought for reducing the ſaid truſt diſpoſitions, or evicting any part of the lands and others thereby diſponed and conveyed, by any creditor or creditors, who may chooſe to follow ſeparate meaſures, and ſhall refuſe to accede to the ſaid truſt-right, and generally to diſpute and compete with every perſon who may claim the lands and others thereby aſſigned and diſponed, or any part thereof, in ſuch manner as the ſaid truſtee acting for the time ſhall think proper, and to lay out all neceſſary expences for that purpoſe, which ſhall be accordingly allowed out of the produce of the funds conveyed by the

ſaid

ſaid truſt-right: And, in caſe any of the creditors who ſhall refuſe to accede to the ſaid truſt-right, ſhall proceed to lead adjudications, or other diligence, for evicting the ſubjects made over to the ſaid truſtees for our behoof, then it ſhall be competent to all and each of us, to uſe the like diligence for preſerving a *pari paſſu* preference to us. *And further*, *whereas* the truſt-right granted by the ſaid A. B. does not reſerve any ſum for his aliment (*a*), we hereby authoriſe the acting truſtee for the time, to allow the ſaid A. B. an aliment out of the produce of his eſtate of ——— pounds Sterling yearly, ay and while the ſale of the ſaid eſtate, or at leaſt ſo long as the truſtee ſhall judge proper; and which aliment ſhall be payable at two terms in the year, Whitſunday and Martinmas, by equal portions, beginning the firſt term's payment at the term of Whitſunday one thouſand ſeven hundred and eighty —— years, and ſo forth termly thereafter until the actual ſale of the ſaid eſtate, unleſs the ſaid A. B. ſhall happen to die before ſuch ſale; in which caſe the ſaid aliment ſhall ceaſe from the term preceding ſuch deceaſe; and

Clauſe allowing an aliment to the granter of the truſt diſpoſition.

and which annuity is hereby declared to be alimentary to the ſaid A. B. and not affectable by his creditors: *And*, in caſe the ſaid A. B. ſhall incline, at any time before the ſale, to poſſeſs two or three hundred acres of land contiguous to the manſion-houſe, offices, and garden of C. and to receive the kains and carriages payable by the tenants of that eſtate, we hereby alſo empower the acting truſtee to ſet ſaid two or three hundred acres to the ſaid A. B. at ſuch a rent as ſhall be ſet thereon by two neutral perſons, one to be choſen by the ſaid A. B. and another by the truſtees; and the ſaid A. B. to uplift the kains and carriages, paying the converted prices for the ſame, mentioned in the tacks, the ſaid A. B. giving at leaſt ſix months previous intimation to the acting truſtee of ſuch his intention of taking ſaid lands, and the ſame when he is to remove from them. *And* it is hereby *provided* and *declared*, that this ſubmiſſion ſhall ſubſiſt notwithſtanding the deceaſe of any of the parties ſubmitters during the dependence thereof; and that it ſhall be in the power of the ſaid C. D. and failing him, of the other truſtee

Proviſion, that the ſubmiſſion ſhall ſubſiſt notwithſtanding the death of the parties.

truſtee or truſtees, acting for the time, in the order before mentioned, to pronounce and give forth decreets-arbitral, one or more, in the premiſſes, notwithſtanding ſuch deceaſe of the parties ſubmitters during the dependence as aforeſaid; which decreets ſhall be as binding upon their heirs and repreſentatives, as if the ſame had been pronounced during the lifetime of the ſaid parties ſubmitters, or as if the heirs and repreſentatives had ſigned this preſent ſubmiſſion. *And laſtly*, it is hereby *declared*, that the agents and factors ſubſcribing hereto, for their clients and conſtituents, ſhall only be underſtood to bind their ſaid clients and conſtituents reſpectively, and nowiſe themſelves perſonally: *And we conſent* to the regiſtration hereof, and of the decreets-arbitral, one or more, to follow hereupon, in the books of council and ſeſſion, &c. (for preſervation and execution. Then follows *ſubſcription clauſe*.)

Declaration, that agents and factors are only to bind their conſtituents. Regiſtration.

Sometimes the allowance of an aliment to the granter of a truſt-right, is different from that above mentioned, of a ſum of money: For inſtance, if he has been proprietor of more eſtates than one, and propoſes

Variation in the clauſe of aliment.

poſes to reſerve the rents of one of them till he ſee how his funds turn out, it may be expreſſed thus after letter (*a*): ‘ *And* as ‘ the ſaid A. B. has propoſed to reſerve for ‘ his aliment and maintenance the rents of ‘ the eſtate of D. till ſuch time as the ſame ‘ is ſold, or till the event of his deceaſe, ‘ *we do* therefore *authoriſe* the acting truſ- ‘ tee for the time, to allow the ſaid A. B. ‘ *not only* to continue to poſſeſs theſe parts ‘ of his eſtate of D. preſently in his natural ‘ poſſeſſion, rent free; *but alſo* to uplift, ‘ receive, demand, ſue for, and diſcharge, ‘ the rents, maills, and duties, kains, cuſ- ‘ toms, and caſualties, of the other parts of ‘ the eſtate of D. that are ſet in leaſe; and ‘ that till the term of entry of the purcha- ‘ ſer, or purchaſers, to whom the ſaid eſtate ‘ may be ſold: *But declaring* always, as it ‘ is hereby expreſsly *provided* and *declared*, ‘ that, if the rents of the ſaid eſtate of C. ‘ ſhall, at any time, fall ſhort of the pay- ‘ ment of the annualrents of the debts, the ‘ ſaid A. B. by acceptation hereof, becomes ‘ bound and obliged to make payment to ‘ the acting truſtee for the time, of ſuch ‘ deficiency out of the rents of the ſaid

‘ lands

lands and eſtate of D. and, in caſe of the failing ſo to do, the ſaid truſtee, or his truſtees, ſhall then have full powers to intromit with, uplift, and receive, as much of the rents of the ſaid lands and eſtate, as ſhall make up, ſatisfy, and pay ſuch deficiency; but which rents are not, in any other caſe, to be intromitted with by the ſaid truſtee.'

Obſervations on the ſolemnities of of ſuch deeds.

As theſe deeds are generally intended to be ſigned by a great number of perſons, they were, ſome time ago, commonly written on the face of a large ſheet of vellum; but an objection now lies againſt them, if executed in that manner, the duty on deeds requiring ſtamped paper, (whereof this is one), being by 23d Geo. III. higher by 3d. than that on writings to which vellum is requiſite; which was not the caſe previous to that ſtatute: And this practice having crept in, as deeds written on paper, parchment, or vellum, paying a higher duty than that required by law, were always valid, but not thoſe written on that which paid a lower duty. Stamped paper has, however, for ſome time been obtained, of a ſize nearly equal to that of the largeſt

parchment or vellum, which removes this difficulty. It is indeed thought, that theſe long deeds, ſigned by a number of perſons, might be executed on different ſheets written ſheet-ways, and battered together and ſubſcribed, at the joinings, by one or two of theſe perſons; the ſubſcription clauſe running in theſe terms: '*In witneſs* 'whereof we have ſubſcribed theſe pre- 'ſents, written upon this and the —— 'preceding ſheets of ſtamped paper, by '———, the joinings of the ſaid ſheets 'being ſigned by —— and —— two of 'us the ſaid creditors; we the other credi- 'tors hereby diſpenſing with our ſigning 'the joinings of the ſheets, becauſe there 'is not room; but declaring theſe preſents 'to be as ſufficiently binding and obliga- 'tory as if ſigned by the whole of us the 'ſaid creditors at the joinings of the 'ſheets; and theſe preſents are ſubſcribed 'on this ſheet by us all as follows,' viz. (Here go on as in a common ſubſcription clauſe, only adding the deſignations of the ſubſcribers, as they are not ſpecially de- ſigned above.)

Inſtru-

Inſtruments of Seiſine upon the foregoing Truſt Diſpoſitions.

Inſtrument of ſeiſine upon the *firſt example* of a *truſt diſpoſition* may be in theſe terms: In the name of God, amen. Be it known to all men, by this preſent public inſtrument, That, upon the —— day of —— years, and of the reign of our Sovereign Lord George the Third, by the grace of God, King of Great Britain, France, and Ireland, Defender of the Faith, the —— year; *in preſence* of me notary-public, and witneſſes after deſigned, ſubſcribing, and at the manor place of C. by the diſpenſing clauſe in the charter under the great ſeal, in favour of J. B. Eſq; of C. dated the —— day of ——— 17—— ſealed ———, declared to be the place for taking infeftment, then, and in all time coming, and that by earth and ſtone only, for the whole lands, baronies, and others after

—upon the firſt truſt diſpoſition.

Invocation.

Date. King's reign.

Compearance of the vaſſal's procurator.

after mentioned; *compeared* ——— ——— as procurator and attorney, for, and in name of C. D. of E. F. G. of H. and J. K. in L. whoſe power of attorney was ſufficiently known to me, notary-public: *Where alſo compeared* ——— bailie in that part, ſpecially conſtituted, by the precept of ſeiſine after inſert, the ſaid ——— attorney foreſaid *having*, and in his hands *holding*, a truſt-right and diſpoſition, dated the ——— day of ——— made and granted by A. B. of C. which narrates, that the ſaid A. B. was reſting and owing ſeveral conſiderable debts, agreeable to a liſt of the ſame ſubſcribed by him as relative thereto; and that *therefore*, and for further ſecurity, and more ſpeedy and effectual payment to his ſaid creditors, or any other creditors who may be omitted in ſaid liſt, ſhould any be, as well as for the more eaſily ſettling his affairs, and the preſervation of ſuch parts of his lands and eſtate as might remain after payment of his debts, *did* thereby *alienate* and *diſpone*, to and in favour of the ſaid C. D. F. G. and J. K. and the accepters or accepter, and ſurvivors or ſurvivor of them, any two of them being a quorum,

Compearance of the ſuperior's bailie.

Narrative.

rum, for all the purpoſes therein and after mentioned, except that of ſelling the lands, in which all of them ſhould concur, heritably and irredeemably, *in truſt*, for the uſes, ends, and purpoſes, with and under the conditions, proviſions, and declarations therein and after mentioned, *all* and *whole* the lands, baronies, and others under written, viz. (Here take in the deſcription of the eſtate as in the truſt diſpoſition), together with all right, title, intereſt he had, or could pretend to the ſaid lands, baronies, and others; *and that* in truſt, for the uſes, ends, and purpoſes, with the powers, and under the burdens, reſervations, conditions, proviſions, and declarations, ſpecified in the ſaid truſt diſpoſition, and engroſſed in the precept of ſeiſine after inſert; as the ſame, containing an obligement to infeft, to be holden either *a me* or *de me*, a procuratory of reſignation, a clauſe of abſolute warrandice, the precept of ſeiſine after inſert, and other clauſes, more fully bears: *Which* truſt right and diſpoſition, the ſaid ——— attorney foreſaid, exhibited and preſented to the ſaid ———, deſiring and requiring him to accept of the ſaid

Delivery of the warrant to the bailies.

after mentioned; *compeared* ——— ——— as procurator and attorney, for, and in name of C. D. of E. F. G. of H. and J. K. in L. whoſe power of attorney was ſufficiently known to me, notary-public: *Where alſo compeared* ——— bailie in that part, ſpecially conſtituted, by the precept of ſeiſine after inſert, the ſaid ——— attorney foreſaid *having*, and in his hands *holding*, a truſt-right and diſpoſition, dated the ——— day of ——— made and granted by A. B. of C. which narrates, that the ſaid A. B. was reſting and owing ſeveral conſiderable debts, agreeable to a liſt of the ſame ſubſcribed by him as relative thereto; and that *therefore*, and for further ſecurity, and more ſpeedy and effectual payment to his ſaid creditors, or any other creditors who may be omitted in ſaid liſt, ſhould any be, as well as for the more eaſily ſettling his affairs, and the preſervation of ſuch parts of his lands and eſtate as might remain after payment of his debts, *did* thereby *alienate* and *diſpone*, to and in favour of the ſaid C. D. F. G. and J. K. and the accepters or accepter, and ſurvivors or ſurvivor of them, any two of them being a quorum,

Compearance of the ſuperior's bailie.

Narrative.

rum, for all the purpoſes therein and after mentioned, except that of ſelling the lands, in which all of them ſhould concur, heritably and irredeemably, *in truſt*, for the uſes, ends, and purpoſes, with and under the conditions, proviſions, and declarations therein and after mentioned, *all* and *whole* the lands, baronies, and others under written, viz. (Here take in the deſcription of the eſtate as in the truſt diſpoſition), together with all right, title, intereſt he had, or could pretend to the ſaid lands, baronies, and others; *and that* in truſt, for the uſes, ends, and purpoſes, with the powers, and under the burdens, reſervations, conditions, proviſions, and declarations, ſpecified in the ſaid truſt diſpoſition, and engroſſed in the precept of ſeiſine after inſert; as the ſame, containing an obligement to infeft, to be holden either *a me* or *de me*, a procuratory of reſignation, a clauſe of abſolute warrandice, the precept of ſeiſine after inſert, and other clauſes, more fully bears: *Which* truſt right and diſpoſition, the ſaid ——— attorney foreſaid, exhibited and preſented to the ſaid ———, deſiring and requiring him to accept of the ſaid

Delivery of the warrant to the bailies.

ſaid office of bailiary committed to him by the precept of ſeiſine therein contained; and by virtue of the ſaid truſt right and diſpoſition and precept of ſeiſine, and of his ſaid office, to infeft the ſaid C. D. F. G. and J. K. truſtees foreſaid, in the lands and others particularly before mentioned; *which* deſire the ſaid ———— judged reaſonable, and accepted of the ſaid office of bailiary, received the ſaid truſt right and diſpoſition into his hands, and delivered the ſame to me notary-public, ſubſcribing, to be read and publiſhed in preſence of the witneſſes: Which I accordingly did; and of which precept of ſeiſine therein contained the tenor follows *verbatim*: '*Attour*,' &c. (Here take in the precept.) *After reading* and *publiſhing* of which truſt right and diſpoſition, and precept of ſeiſine therein contained, above inſert, the ſaid ———— bailie, by virtue thereof, and of his ſaid office of bailiary, *gave* and *delivered* heritable ſtate and ſeiſine, actual, real, and corporal poſſeſſion, to the ſaid G. D. F. G. and J. K. truſtees foreſaid, of *all* and *ſundry* the lands, baronies, and others foreſaid, here held as repeated;

Acceptance by him.

Delivery to the notary.

Publication by him.

Inſertion of the precept.

Delivery of ſeiſine.

repeated; and that by delivery of earth and ſtone only, of the ground of the ſaid lands of ———, in virtue of the ſaid diſpoſition, to the ſaid ——— attorney, for, and in name of the ſaid truſtees, who accepted thereof, none objecting thereto; to be holden in manner before mentioned: But always in truſt, for the uſes, ends, and purpoſes, with the powers, and under the burdens, conditions, proviſions, and declarations before written: *Whereupon*, and upon all and ſundry the premiſſes, the ſaid ——— attorney foreſaid, aſked and took inſtruments, one or more, in the hands of me notary-public, ſubſcribing. *Theſe things* were done duly and lawfully in all points, at the ſaid manor place of C. in manner mentioned in this preſent public inſtrument, between the hours of —— and —— afternoon of the day of the month, year of God, and of his Majeſty's reign, reſpectively before written; *in preſence* of and witneſſes to the premiſſes, ſpecially called and required.

Attorney's taking of inſtruments.

Place.

Hour.

Witneſſes.

—— *upon*

—upon truſt diſpoſition to accountants.

—— *upon Truſt Diſpoſition to Accountants.*

Invocation, &c. Compearance of the vaſſal's attorney,

In the name of God, &c. Compeare as procurator and attorney for, and in name of C. D. F. G. H. and J. K. all accountants in Edinburgh whoſe power of attorney was ſufficientl known to me notary-public. *And alſ* compeared bailie in tha part, ſpecially conſtitute, by the precept o ſeiſine after inſert, the ſaid attorney foreſaid, *having*, and in his hand *holding*, a truſt right and diſpoſition, date the —— day of ——— years, made an granted by A. B. of C. which narrates that the ſaid A. B. was addebted, &c. (an ſo narrate it to the obligement to infeft and ſay), as the ſame, containing an oblige ment to infeft, to be holden either *a me* o *de me*, a procuratory of reſignation, clauſe of abſolute warrandice, the precep of ſeiſine after inſert, and ſeveral othe clauſes

and ſuperior's bailie.

Narrative.

clauſes, more fully bears: *Which* truſt right, &c. deſiring and requiring, &c. to infeft the ſaid C. D. F. G. H. I. and J. K. truſtees foreſaid, in the lands and others particularly before mentioned:—*Which* deſire, &c. and of which precept of ſeiſine the tenor follows *verbatim.* (Inſert the precept.) *After reading*, &c. *gave* and *delivered* heritable ſtate and ſeiſine, actual, real, and corporal poſſeſſion, of *all* and *whole* the lands, baronies, teinds, patronages, mills, and others, with the whole pertinents, lying and deſcribed as aforeſaid, to the ſaid C. D. F. G. H. I. and J. K. or to ſuch other perſons as may hereafter be named and appointed by the ſaid A. B.'s creditors, purſuant to the powers committed to them by the ſaid truſt right and diſpoſition, in the order before mentioned, as truſtees for, and to the uſe and behoof of the ſaid A. B.'s creditors before named, and any other his juſt and lawful creditors omitted in the ſaid diſpoſition, whom the ſaid truſtees may hereafter aſſume into the benefit thereof, by virtue of the powers thereby committed to them; and that by delivery of earth and ſtone

Delivery to the bailie.

Acceptance, &c. Inſertion of the precept. Delivery of ſeiſine, &c.

only, of the ground of the ſaid lands
———, in virtue of the ſaid diſpoſitio
to the ſaid ——— as attorney for, a
in name of the ſaid truſtees, who accept
thereof, no perſon objecting thereto, to
holden in manner before mentioned; wit
and under the conditions, proviſions, a
declarations before written: *Whereupo*
&c. *Theſe things* were ſo done, duly a
lawfully in all points, at the ſaid manc
place of C. in manner mentioned in th
preſent public inſtrument, between th
hours, &c. *In preſence of*, &c.

TITL

TITLE XI.

Charters by Progreſs of Subject Superiors, and Writings for conſolidating Properties and Superiorities.

Obſervations.

BY the ſtrict principles of the feudal law, ſuperiors were not obliged to receive, and enter as vaſſals, any other perſons than the heirs of their former vaſſals. They were afterwards, by different acts of parliament, obliged to receive adjudgers and purchaſers of bankrupts eſtates, upon payment of a year's rent: Purchaſers,

ſers, by private bargain, were therefor
put to conſiderable trouble and expence i
obtaining entries, being obliged to tak
truſt-bonds, and thereupon adjudge: Bu
by the *act 20th Geo. II. for aboliſhin*
ward-holaings, ſuperiors are directed to en
ter all perſons who have got, from th
vaſſals, diſpoſitions, containing procurator
of reſignation, they always receiving
year's rent of the lands, or other ſubjects
which is underſtood to be, with deductio
of that year's feu-duty, or other dut
payable to the ſuperior, and of the publi
burdens, with allowance of reaſonable re
pairs on the ſubjects. Sometimes the entr
is, by the rights of the ſubject, taxed at
particular ſum, in place of the year's rent
paction, in this caſe, muſt come in plac
of the ſtatute.

The firſt thing to be done, is to reſig
in the hands of the ſuperior, or of the per
ſon who has his commiſſion; whereupo
an inſtrument of reſignation is taken i
the hands of a notary-public; and th
ſuperior afterwards grants a charter of re
ſignation, which may be as follows:

Charte

Charter of Reſignation.

Charter of reſignation.

To all and *ſundry* to whoſe knowledge theſe preſents ſhall come (*a*), *A. B.* Eſq; of C. ſuperior of the lands and others under-written (*b*), *know ye me to have given, granted*, and *diſponed*, and for me, my heirs, and ſucceſſors, perpetually *confirmed*, *as* I hereby (*c*) *give*, *grant*, and *diſpone*, and for me (*d*), my heirs, and ſucceſſors, perpetually *confirm* to *my lovite*, D. E. of G. and his heirs or aſſignees whatſoever, heritably and irredeemably, *all* and *whole* (inſert the lands), together with all right, title, or intereſt, I have, or can pretend thereto, or to any part or portion thereof, rents, maills, and duties of the ſame: *Which* lands formerly belonged heritably to C. D. in E. and were diſponed by him to the ſaid D. E. by diſpoſition (1), containing procuratory of reſignation, dated the —— day of —— 17—; and, by virtue

Premiſſes.

Superior.

Granter.

Diſpoſitive.

Vaſſal's receiver.

Quaequidem.

tue of the procuratory of reſignation contained in the ſaid diſpoſition (2), the ſaid lands were duly and lawfully reſigned in the hands of me (*e*), as immediate lawful ſuperior thereof, by ſtaff and baton, as uſe is; *in favour*, and for new infeftment of the ſame, to be granted to the ſaid D. E. and his heirs and aſſignees, heritably and irredeemably (3), as authentic inſtruments taken upon the ſaid reſignation in the hands of ——— notary-public, of the date hereof, more fully bear; *to be holden*, the ſaid lands and others, with the pertinents before mentioned, by the ſaid D. E. and his foreſaids, of and under me (*f*), my heirs and ſucceſſors, in feu-farm, fee, and heritage, for ever, by all juſt meiths, and marches, and ancient boundaries and diviſions thereof: *Giving* therefor yearly, the ſaid D. E. and his foreſaids, to (*g*) me, and my foreſaids, the ſum of —— money, in name of feu-farm, at two terms in the year, Whitſunday and Martinmas, by equal portions, and doubling the feu-duty the firſt year of the entry of each heir to the ſaid lands. (Here may be inſert the ſum to be paid for the entry of a ſingular ſucceſſor,

Tenendas.

Reddendo.

and

and any other thing to be paid, or performed, by the vaſſal to the ſuperior, as in the diſpoſition); and that for all other burden, exaction, or ſecular ſervice whatever: *Saving* always (*h*) my own right as ſuperior, and the right of every other perſon, according to law. *Attour*, to the effect the ſaid D. E. and his foreſaids, may be infeft and ſeiſed in the ſaid lands, I hereby (*i*) *conſtitute* and *appoint*

Precept of ſeiſine.

and each of you, conjunctly and ſeverally (*j*), my bailies in that part, to paſs to the ground of the ſaid lands, and there give and deliver heritable ſtate and ſeiſine, actual, real, and corporal poſſeſſion, of *all* and *whole* the foreſaid lands and others, with the pertinents, lying, bounded, and deſcribed, in manner above mentioned, and here held as repeated *brevitatis cauſa*, to the ſaid D. E. and his foreſaids; and that by delivery to him, or his certain attorney, or attornies, in his name, bearers hereof, of earth and ſtone of the ground of the ſame; and this in nowiſe ye leave undone: The which to do (*k*), I commit to you, and each of you, conjunctly and ſeverally (*l*), my full pow-

er,

Subſcription clauſe, or concluſion and teſting clauſe.

er, by this my precept of ſeiſine, directed to you for that effect. *In witneſs* whereof theſe preſents, written on this and the —— preceding pages of ſtamped vellum by ———, are ſubſcribed by me, and my proper ſeal ordered to be hereunto appended, at —— the —— day of ——— years, before theſe witneſſes,

and

Obſervation on the ſolemnities of writings.

It may be obſerved, on the above ſubſcription clauſe, that antiently, when writing was little uſed, deeds were executed by the party appending his ſeal to them. But even then the preſence of witneſſes at the ſealing was neceſſary, as appears by our oldeſt writings yet extant. See *Regiam Majeſtatem*, l. 2. c. 38. § 1.—Craig 186 § 17. For preventing frauds, that might happen by appending ſeals to falſe deeds, the ſubſcription alſo of the granter was required by 1540, c. 117; and, if he could not write, that of a notary. But this act not having expreſsly required the ſubſcription of the witneſſes, it was thought ſufficient to inſert their names in the body of the deed. By 1579, c. 80, and the ſubſequent practice, the principal party muſt ſubſcribe

ſubſcribe any writings of importance, or two notaries for him; and the witneſſes muſt be ſpecially deſigned. Sealing is now fallen into diſuſe, and never mentioned in any writings except charters, to which the making mention of it gives a certain air of grandeur. It is ſtill uſed in England; and, though the witneſſes ſubſcribe, they are not deſigned; nor is the writer's name required to be inſert there, as with us in Scotland, by 1593, c. 175. On which accounts Lord Kaims, in his *Hiſtorical Law Tracts*, prefers the ſolemnities uſed in Scotland, as being the moſt complete.

If the foregoing charter proceeds upon any other right than a diſpoſition, for inſtance, a tailzie, the name of the deed is mentioned at figures (1) and (2); and, if there are conditions, reſervations, &c. they are inſert at fig. (3), and muſt be referred to in a general manner in the precept of ſaiſine.

Variations, if the charter proceeds upon a tailzie.

If the charter is granted by a commiſſioner, ſay at letter (*a*), 'P. Q. of R. commiſſioner, ſpecially conſtituted by A. B. Eſq; of C. ſuperior of the lands and others under-written, conform to his com-

—if by a commiſſioner.

'miſſion in my favours, dated the —— 'day of ——, and regiſtered in the book 'of council and ſeſſion the —— day o '—— 178— years; whereby I am ſpeci 'ally empowered to receive reſignations 'and to grant charters, and all other wri 'tings neceſſary, agreeable to the laws o 'Scotland, in manner more fully mention 'ed in the ſaid commiſſion;' leave ou what is betwixt (*a*) and (*b*); at letter (*c*) add, 'as commiſſioner foreſaid;' at (*d*) i place of the words 'me, my' ſay, 'th 'ſaid A. B. his;' at (*e*) add, 'in the hand 'of me the ſaid P. Q. as in the hands o 'the ſaid A. B.;' leave out the word 'as, go on with 'immediate,' &c.; at (*f*) fo 'me, my' ſay, 'the ſaid A. B. his'; a (*g*), 'for me, and my,' the ſaid A. B. his (*h*) '*ſaving* always the ſaid A. B.'s right, &c. (*i*), add, 'as commiſſioner foreſaid,' (*j*) add, 'the ſaid A. B.' (*k*), add, 'a 'commiſſioner foreſaid;' and at (*l*) leave out the word 'my.'

—if to an aſſignee.

If the diſponee had aſſigned his right before obtaining a charter, the *quaequidem* will be, '*which* lands formerly belonged 'heritably to C. D. in E. and were diſ 'poned by him to ——— by diſpoſition, 'containing

'containing procuratory of reſignation, 'dated the —— day of ——— 17— 'years (*a*); and which lands and diſpoſi- 'tion foreſaid, with the procuratory of 'reſignation therein contained, were ſold, 'diſponed, and aſſigned by the ſaid —— 'to the ſaid D. E. conform to diſpoſition 'and aſſignation, dated the —— day of '——; and by virtue of the procuratory 'of reſignation, contained in the ſaid diſ- 'poſition by the ſaid C. D. to the ſaid '——, and diſpoſition and aſſignation by 'him to the ſaid D. E. the ſaid lands, &c. '*in favour*, &c. to be granted to the ſaid 'D. E. as having right in manner foreſaid, 'and his heirs,' &c.

—to an heir ſerved.

If to an heir ſerved and retoured, the perſon receiving ſuch charter will be deſigned 'eldeſt lawful ſon and heir, ſerved 'and retoured to the deceaſed ———;' and it will go in the *quaequidem*, as in the caſe of an aſſignee, to letter (*a*), and then ſay, 'to which diſpoſition, and procura- 'tory of reſignation therein contained, the 'ſaid D. E. has now right as heir ſerved 'and retoured to his ſaid father, before '——, conform to the retour of his ge-

'neral

'neral ſervice, dated ——, and by virtue
'of the procuratory of reſignation con-
'tained in the ſaid diſpoſition, and of ſaid
'retour, the ſaid lands, &c. *in favour* of
'the ſaid D. E. as heir ſerved and retoured
'to his father in manner foreſaid, and his
'heirs,' &c. and, in the precept of ſeiſine,
'to the ſaid D. E. as heir foreſaid, and that
'by deliverance,' &c.

Charter to the crown preſented in the caſe of baſtardy.

Charter in caſe of Baſtardy.

If lands held of a ſubject fall into the King's hands by the baſtardy, and death, without iſſue lawfully procreated, of the body of the vaſſal, as the King cannot hold of a ſubject, he preſents a vaſſal to the ſuperior, by gift under the quarter ſeal; and the *quaequidem* is expreſſed thus: 'Which 'lands and others aforeſaid, formerly be-'longed heritably to C. D. in E. who was 'born a baſtard, held of me as ſuperior, and 'who, having died a baſtard, without law-

'ful

'ful heirs of his own body, or making any 'diſpoſition thereof, the ſaid lands and o-'thers foreſaid, by the laws of this king-'dom, and inherent privilege of the 'crown, came into the hands of our So-'vereign Lord the King, who, by his let-'ters of preſentation under the quarter ſeal, 'commonly called the teſtimonial of the 'great ſeal, directed to me, named and 'preſented the ſaid D. E. his heirs and aſ-'ſignees, to be my vaſſals in the ſaid lands, 'in room and place of the ſaid C. D. on 'account of whoſe baſtardy and death, 'without heirs of his body, the ſaid lands 'had come into his Majeſty's hands as a-'foreſaid; as in the ſaid letters of preſen-'tation, dated the —— day of ——, is 'more fully recited. *To be holden*,' &c.

Charter, in caſe of Ultimus Haeres.

—in caſe of *ultimus haeres.*

If lands held of a ſubject, are fallen into the King's hands as *ultimus haeres*, '*which* lands, and others foreſaid, formerly be-'longed

'longed heritably to C. D. holden of m
'as ſuperior, and by whoſe death, in th
'month of ——, without heirs lawfully be
'gotten of his own body, or any other per
'ſon within the tenth degree of kin, wh
'might ſucceed to him *jure ſanguinis*, an
'without any diſpoſition lawfully made
'the right of ſucceſſion to the ſame b
'reaſon of *ultimus haeres*, laws and inhe
'rent privilege of the crown, came into th
'hands of our Sovereign Lord the King
'who, by his letters of preſentation unde
'&c. *nominated* and *preſented*, &c. in roo
'and place of the ſaid C. D. by whoſe de
'ceaſe the ſaid lands, and others foreſaid
'came into his Majeſty's hands in manne
'above expreſſed; as in the ſaid letters o
'preſentation, dated, &c. more fully
'contained. *To be holden*,' &c.

Clauſe of *novodamus*.

A clauſe of *novodamus* is ſometimes ad
ded, where the rights have become intri
cate or inexplicable, or a great deal of ca
ſualties have fallen, and is of the ſam
force as an original grant, with regard t
the ſubjects therein contained, beſides ca
rying a diſcharge of the caſualties. It ma
come in after the *quaequidem*, and be thus

'*More*

'*Moreover*, for divers good and weighty 'cauſes and conſiderations, me thereto 'moving, *wit ye* me *to have*, *of new*, '*given*, *granted*, and *diſponed*, as I hereby '*of new*, *give*, *grant*, and *diſpone* to the 'ſaid D. E. his heirs and aſſignees, heri-'tably and irredeemably, *all* and *whole*, '&c. (inſert the ſubjects), with all right, 'title, and intereſt, which I, my predeceſ-'ſors, or authors, heirs, and ſucceſſors, 'had, have, or any ways may have, claim, 'or pretend thereto, in time coming, or 'to the maills, farms, profits, and duties of 'the ſame, by reaſon of non-entry, relief, 'ſingle or liferent eſcheat, diſclamation, 'purpreſture, forfeitures, reduction of in-'feftments, ſervices, or retours, tinſel there-'of by former vaſſals, *ob non ſolutum ca-nonem*; want of confirmation of infeft-'ments, or any other cauſe, or occaſion, 'civil, or criminal, preceding the date of 'theſe preſents; *renouncing*, *transferring*, 'and *overgiving* the ſame, with all action 'competent, or that might be compe-'tent, to me, my heirs, and ſucceſſors 'thereupon, in favour of the ſaid D. E. 'and his foreſaids, in all time coming; '*declaring* this general renunciation to be

'equally

'equally valid and ſufficient, to all intents
'and purpoſes, as if the ſame had been ever
'ſo ſpecial; with the generality whereof
'I hereby diſpenſe for ever.'

Charter of adjudication.

Charter of Adjudication.

A charter, in favour of an adjudger, will be as follows:

Premiſſes. Superior. *To all* and *ſundry* to whoſe knowledge theſe preſents ſhall come, *know ye me*, A. B. of C. ſuperior of the lands and others after mentioned, in obedience of letters of horning, raiſed and executed againſt me for that effect, *to have given, granted*, and *diſponed*, as I by this preſent charter *give, grant*, and *diſpone*, to D. E. in F. his heirs and aſſignees, heritably (*a*), but redeemably, conform to the reverſion of the law, competent by act of parliament, *all* and *whole* (inſert the lands) (*b*); *which* lands and others foreſaid formerly pertained heritably to C. D. in E. and were, by decreet of adjudication of the Lords of Council and

Diſpoſitive. Vaſſal. *Quaequidem.*

and Session, dated the —— day of ——— *adjudged* from him, and *decerned* and *ordained* to *pertain* and *belong* to the said D. E. and his foresaids (*c*), in payment to them of the accumulated sum of ——— and others therein contained; *to be holden* of me, my heirs, and successors, in feu-farm, fee, and heritage (*d*), during the not redemption, with all rights and privileges thereof whatsoever; *paying* yearly therefor the feu-duties, and other duties and services, in use to be paid forth of the said lands: *Therefore*, I hereby make, constitute, and appoint, &c. (Precept of seisine, and subscription clause.)

If on a *decreet of adjudication in implement* at letter (*a*), heritably and irredeemably, 'all and whole,' &c. and at letter (*c*), 'in implement of a contract, or minute of 'sale, entered into between the said C. D. 'and D. E.; by which decreet the superiors of the said lands are ordained to infeft and seise the said D. E. and letters of 'horning to be directed for that purpose, 'as from the said decreet more fully will 'appear; *to be holden*, &c. in feu-farm,

—if on decreet of adjudication in implement.

'fee, and heritage, for ever, with all rights,
'&c. *paying*, &c. *therefore*,' &c.

—if on decreet of ſale.

If in favour of a purchaſer of a bankrupt's eſtate, at (*a*) 'heritably and irredeemably, *all* and *whole*,' &c.; and at (*b*) '*which* lands pertaining heritably to C. D. 'in E. were, in terms of the acts of parliament anent the ſale of bankrupt eſtates, 'expoſed to public roup and ſale, in payment of his debts; and being purchaſed 'by the ſaid D. E. were adjudged and decerned to pertain to him, and his foreſaids, as a decreet of ſale of the Lords of 'Council and Seſſion, pronounced upon 'the —— day of ——— more fully bears; '*to be holden*, &c. in feu-farm, fee, and 'heritage for ever; with all rights, &c.; '*paying*,' &c.

Charter of Confirmation.

If the vaſſal has diſponed the feu to a third perſon, either *a me*, *et de me*, or *de me*, and the diſponee

diſponee is infeft, and wiſhes to have a charter from the ſuperior, he obtains a *charter of confirmation;* which, in the firſt caſe, draws back to the date of the precept, and is conſidered to have been, from the beginning, a public right, and the diſponee has no longer any concern with the diſponer. In the other caſe, it defends from any forfeiture, through the delict of the diſponer to his ſuperior. In either of theſe caſes, it may be in the following terms:

Charter of confirmation.
Premiſſes.
Superior.
Confirming clauſes.

To all and *ſundry* to whoſe knowledge theſe preſents ſhall come, *A. B.* Eſq; of C. ſuperior of the lands and others underwritten, *know* ye me *to have ratified, approven*, and *confirmed*, as I hereby *ratify, approve*, and for me, my heirs, and ſucceſſors, perpetually *confirm*, a diſpoſition, dated the —— day of —— 17—, made and granted by G. H. in ——, heritable proprietor of the lands and others thereby diſponed, to and in favour of (*a*) C. D. in ——, and his heirs and aſſignees, heritably and irredeemably, of *all* and *whole* (take in the lands), and which lands lie within the pariſh of —— and ſheriffdom of ——; together with the obligement to infeft,

infeft, and precept of ſeiſine contained in the ſaid diſpoſition, and inſtrument of ſeiſine following thereon, in favours of the ſaid C. D. dated the ——, and regiſtered in the ——— regiſter of ſeiſines, kept at ———, the —— day of ——— 17—; and that in the whole heads, articles, clauſes, tenors, and contents of the ſaid diſpoſition and infeftment; *diſpenſing* with the generality hereof; *and declaring* this preſent confirmation to be equally good, valid, and ſufficient, to all intents and purpoſes, as if the writs hereby, in general confirmed, were herein particularly, and *verbatim* inſert. *In witneſs*, &c. and ordered my proper ſeal to be hereunto appended. At, &c.

Subſcription clauſe.

Variation, if containing precept of *clare conſtat*.

If to the heir of the diſponee, ſay at letter (*a*), 'the deceaſed C. D.' and the charter of confirmation will include a precept of *clare conſtat* before '*in witneſs*,' &c. thus; '*and whereas*, by the diſpoſition 'and infeftment before confirmed, and o-'ther documents produced to me, and by 'me read, ſeen, and conſidered, *it clearly* '*appears*, and is made known, that the ſaid 'deceaſed C. D. —— in —— father of *my lo-*

vite

'*vite* J. D. —— in —— bearer hereof, died 'laſt veſt and ſeiſed as of fee, at the faith 'and peace of our Sovereign Lord the 'King, *in all* and *whole* the foreſaid (re-'peat the lands), lying as aforeſaid; *and* 'that the ſaid J. D. bearer hereof, is the 'eldeſt lawful ſon of the ſaid deceaſed C. 'D. and ſo my ſaid lovite is neareſt and 'lawful heir to the ſaid C. D. his father; '*and* that he is of lawful age*; *and* that 'the ſaid lands, and pertinents of the ſame, 'are holden of me, my heirs, and ſucceſ-'ſors, *for* the yearly payment to us of —— 'at two terms in the year, Whitſunday 'and Martinmas, by equal portions, in 'name of feu-farm. (Here any other du-'ties, or ſervices, to be paid or performed 'by the vaſſal, by the former rights, may 'be included); *and* that for all other bur-'den, exaction, queſtion, demand, or ſecu-'lar ſervice, which can any ways be juſtly 'exacted, or demanded, by whatſoever 'perſon, or perſons, furth of the premiſſes. '*Therefore*, I hereby *deſire* and *require* 'you, and 'each

* This clauſe is not abſolutely neceſſary ſince the aboliſhing of ward-holding.

'each of you, conjunctly and ſeverally, &c. as in a common precept of ſeiſine 'to the ſaid J. D. as heir foreſaid;'—then follows, '*in witneſs*, &c. and have ordered 'my proper ſeal,' &c.

—if granted by a commiſſioner.

If the *charter of confirmation* is granted by a commiſſioner, the commiſſion muſt be narrated as in charter of reſignation; only in place of '*whereby* I am ſpecially em- 'powered to receive reſignations, and grant 'charters,' ſay, '*whereby* I am ſpecially 'empowered to enter the vaſſals of the ſaid 'A. B. and grant charters.'

—to an heir of tailzie.

Charter of confirmation of a tailzie, and precept to the heir of entail, may be as follows:

Charter of Confirmation of a Deed of Entail, containing Precept of Clare Conſtat.

Premiſſes.

To all and *ſundry*, to whoſe knowledge

Granter.

theſe preſents ſhall come, A. B. Eſq; of C. immediate lawful ſuperior of the lands and

others

thers under-written, *know ye me, in conſi-* Conſide-
deration of a certain ſum of money paid to ration.
me, for my granting hereof, by *my lovite*,
J. D. E. of F. heir-male, and of tailzie and Receiver.
proviſion, ſerved and retoured, to the de-
ceaſed C. D. E. of F. his father, *to have*
ratified, approven, and *confirmed*, as I here- Confirm-
by ratify, approve, and for me, my heirs, ing
and ſucceſſors, perpetually *confirm* a diſpo- clauſes.
ſition, and deed of tailzie, dated ———,
granted by W. E. of F. to the ſaid C. D.
E. (therein named and deſigned C. D. ——
in ——), whereby the ſaid W. E. *gave*,
granted, and *diſponed* to him, and the heirs
male lawfully procreated, or to be procre-
ated, of his body; whom failing, to the
heirs female of the ſaid C. D. E.'s body,
the eldeſt always ſucceeding without divi-
ſion, and their heirs male; which failing,
to the heirs female, the eldeſt always to
ſucceed without diviſion; and failing the
heirs female of his body, and their deſcen-
dants foreſaid, to ſuch perſon, or perſons,
as ſhould be named and appointed heirs of
tailzie, by a writ under the hand of the ſaid
W. E. at any time in his lifetime, *ac etiam*
in articulo mortis; which is declared to be

as

as ſufficient and effectual, to the perſons ſo to be named, as if the ſame were therein engroſſed and inſert, any law or practice to the contrary notwithſtanding; *all* and *whole* (inſert the lands), and the teind-ſheaves of the ſaid —— included, and other teinds, parſonage and vicarage, of the ſame. *Provided* always, as it is thereby expreſsly *provided* and *declared*, that the ſaid C. D. E. ſhall be holden and obliged to take on him the ſirname of E. and wear the arms of E. of F. in all time thereafter and his children, to take on them the ſaid name: And, in caſe the ſaid lands ſhall fall to any of the heirs female of the tailzie foreſaid, ſaid heir female ſhall be obliged to marry a gentleman of the name of E. or one who ſhall take upon him the ſaid name, and wear the arms foreſaid; and the whole deſcendants, or their heirs male or female, that ſhall ſucceed thereto, to be under the ſame reſtriction and obligation. And, in caſe any of the heirs of tailzie foreſaid ſhall contravene the ſaid proviſions and declarations, they are, *ipſo facto* to amit and loſe their right to the lands and others foreſaid, and the ſame to fall and accreſce

accreſces to the next heir of tailzie, in the ſame manner as if the ſaid heir contravening were naturally dead, who may enter, and have acceſs thereto, by adjudication, declarator, or otherwiſe, as accords of law. *Further providing* and *declaring*, that it ſhall not be in the power of the ſaid C. D. E. or any of the heirs of tailzie foreſaid, to ſell, diſpone, dilapidate, or put away the lands above diſponed, or any part thereof, or contract debt, whereby the ſame may be evicted, or adjudged, from them, in time coming; together with the obligement to infeft, and precept of ſeiſine contained in the ſaid diſpoſition and deed of tailzie, and inſtrument of ſeiſine following thereon, in favour of the ſaid C. D. E. dated the —— day of ———, and duly regiſtered in the —— regiſter of ſeiſines, kept at ——— the —— day of ſaid month and year, in the whole heads, articles, clauſes, tenor, and contents of the ſaid diſpoſition, and deed of tailzie, and ſeiſine thereon, in ſo far as the property of the ſaid lands is thereby conveyed to the ſaid C. D. E. and the other heirs above mentioned, and no further; *diſpenſing* with

the generality hereof, and *declaring* theſe preſents to be equally good, valid, and ſufficient, to all intents and purpoſes, as if the ſaid writs confirmed were herein *verbatim* inſerted: *As alſo, becauſe*, by the ſaid diſpoſition, and deed of tailzie, and inſtrument of ſeiſine following thereon, and by retour of the ſpecial ſervice of the ſaid J. D. E. as heir of tailzie, and proviſion of the ſaid C. D. E. his father, dated ——, and other authentic inſtruments and documents produced to me, and by me ſeen, read, and conſidered, *it clearly appears*, and is *made known*, that the ſaid C. D. E. father of *my lovit* J. D. E. bearer hereof died laſt veſt and ſeiſed, as of fee, at the faith and peace of our Sovereign Lord the King, *in all* and *whole* the ſaid (inſert the lands), with the teinds and pertinents of the ſame, particularly before mentioned; *and* that the ſaid J. D. E. bearer hereof, is the eldeſt lawful ſon of the ſaid deceaſed C. D. E. and ſo my ſaid lovit is nearest and lawful heir of tailzie and proviſion to the ſaid C. D. E. his father; *and* that he is of lawful age; *and* that the foreſaid lands, teinds, and others, are *holden* of and

Precept of *clare conſtat*.

under

under me, my heirs, and ſucceſſors, *for* payment yearly to me, and my foreſaids, of the ſum of ——, in name of feu-duty, as contained in certain ancient rentals of the feu-duty, payable to my predeceſſors out of the lands of the barony of ——, whereof the ſaid lands are a part, at two terms in the year, Whitſunday and Martinmas, by equal portions, and doubling the ſaid feu-duty the firſt year of the entry of each heir to the ſaid lands, teinds, and others foreſaid, as uſe is, of feu-farm; as alſo paying all other and further feu-duties, and doing and performing all ſervices, and fulfilling and obſerving all conditions, if any be, which are contained in, and demandable, in virtue of the former rights and infeftments thereof, granted by my predeceſſors, or authors, to the authors of the ſaid J. D. E. *Therefore*, I hereby *deſire* and *require* you,

and each of you, jointly and ſeverally, my bailies in that part, hereby ſpecially conſtitute, to the effect after-written, that, upon ſight hereof, ye paſs to the ground of the ſaid lands, and there give and deliver heritable ſtate and ſeiſine, actual,

tual, real, and corporal poſſeſſion, to the ſaid J. D. E. as heir foreſaid, of *all* and *whole* the foreſaid (inſert the lands), with the pertinents thereof, lying as aforeſaid, and the teind-ſheaves of the ſaid —— included, and other teinds, parſonage and vicarage, of the ſame, to be holden as ſaid is; and that by deliverance to him, or his certain attorney, or attornies, in his name, bearers hereof, of earth and ſtone of the ground of the ſaid lands, a handful of graſs and corn for the ſaid teinds, parſonage and vicarage, and all other ſymbols requiſite and neceſſary; for doing whereof I hereby commit to you, and each of you, jointly and ſeverally, my full power, by this my precept; *ſaving* my own, and every perſon's right, according to law. *In witneſs*, &c. and have ordered my proper ſeal, &c.

But, if the diſponee has been infeft, and the ſuperior has confirmed the ſame, when the heir enters, he receives only a precept of *clare conſtat*, thus: 'A. B. Eſq; of C. 'ſuperior of the lands and others under-'written; *whereas*, by authentic inſtru-'ments and documents, produced, &c. *it* '*clearly*,' &c.—or, '*whereas*, by (here may

Precept of *clare conſtat* (per ſe.)

may be mentioned any particular writings, ſuch as the laſt charter (or diſpoſition) and ſeiſine, or the heir's ſpecial retour), '*it clearly appears*,' &c. (and ſo on to the end as above.)

Theſe precepts are ſometimes written in Latin, where thoſe in favour of the former heirs in the ſubject have been in uſe to be ſo written; and may be thus:

A. B. de C. armiger, ſuperior terrarum illiorumque ſubſcript. *quia* per inſtrumenta et documenta, coram me oſtenſa et producta, ac per me viſa et praelecta, *clare conſtat*, et eſt notum, quod quondam C. D. de E. pater *dilecti* J. D. de E. latoris praeſentium, ultimo obiit veſtitus et ſaſitus, ut de foedo, ad fidem et pacem S. D. N. Regis, in *toto* et *integro* (inſere terras), jacen. infra parochiam de ——— et vicecomitatum de ——; *et* quod dict. J. D. lator praeſentium, eſt filius legitimus natu maximus dict. de mortui C. D. et ſic eſt legitimus et propinquior haeres dict. C. D. patris; et quod eſt legitimae aetatis; *et* quod praedict. terrae et pertinen. earundem de me, haeredibus et ſucceſſoribus meis, *in* feudi firma

—in Latin.
Granter.
Superior.
Predeceſſor's death at the faith and peace of our Sovereign.
Lands in which he died infeft.
Propinquity of the heir.
That he is of lawful age *.
Of whom the lands are held.
By what manner of holding.

* This not now neceſſary.

For what duty or ſervice.

firma et haereditate tenentur, *pro* annua ſolutione mihi, haeredibus meis, ſucceſſoribus ſeu aſſignatis quibuſcunque, ſumma —— monetae Scotiae, ad duos anni terminos, feſta ſcilicet Pentecoſtes, et Sanct Martini, per aequales portiones, nomin feudae firmae; pro omnio alio onere, exac tione, quaeſtione, demanda, ſeu ſeculari ſer vitio, quae ex dictis terris ullo modo exig ſeu requiri poteſt: *Vobis* igitur

Precept of ſeiſine.

et veſtrum cuilibet, conjunctim et diviſim, balivis meis in hac parte ſpecia liter conſtitutis, *praecipio* et firmiter *mand* quatenus viſis praeſentibus, indilate ſtatu et ſaſinam haereditariam, pariterque po ſeſſionem actualem, realem, et corporalem *totarum* et *integrarum* praedict. terraru et pertinen. earundem, jacen. et deſcrip ut ſupra, praefato J. D. tanquam haere antedict. vel ſuo certo actornato, lato praeſentium, per terrae et lapidis fundi di terrarum, ut moris eſt, traditionem; ſe cundum tenorem antiquorum infeofamen torum, et evidentorum earundem, juſte *tra ditis*, et ſine dilatione *deliberitis;* et hoc null modo omittatis; ad quod faciendum vobi et veſtrum cuilibet, conjunctim et diviſim

baliv

balivis meis in hac parte antedict. meam plenam, tenore praeſentium, committo poteſtatem; *ſalvo* jure meo, et cujuſlibet: *In* cujus rei teſtimonium praeſentibus (ex chirographo —— ſcribae in —— ſuper membranam debite impreſſam), manu mea ſubſcript. ſigillum meum eſt appenſum apud —— die menſis ——, anno Domini milleſimo ſeptingenteſimo ——: Coram his teſtibus et

Subſcription clauſe.

If the ſuperior refuſes to enter the heir, in place of the tedious method of obtaining three conſecutive precepts from the chancery, directed to the ſuperior, and a fourth to the ſheriff for infefting him, he may now obtain horning, on bill to the Lords of Council and Seſſion, as mentioned in treating of *Diſpoſitions, with power to make up titles in the granters names.*

Obſervations, if the ſuperior refuſe to enter the heir, the heir may, in place of *running the precepts* againſt him, obtain horning.

It was formerly obſerved, that, a perſon veſted by diſtinct rights in the property and ſuperiority of lands, might, at any time, grant a procuratory in his own favours, for reſigning the property *ad remanentiam*, to conſolidate it with the ſuperiority; which may be as follows:

—on conſolidating property and ſuperiority.

Procu-

Procuratory of reſignation in one's own favours, ad remanentiam.

Procuratory of Reſignation ad remanentiam *in one's own favours, for conſolidating the Property and Superiority of Lands.*

Premiſſes. Granter. Narrative.

Know all men, by theſe preſents, me, A. B. of C. *whereas* I ſtand heritably infeft and ſeiſed, as heir of proviſion to the deceaſed J. B. late of —— my uncle, in *all* and *whole*, &c. (take in the lands), conform to the retour of my ſervice, as heir in ſpecial to the ſaid deceaſed J. B. before the ſheriff-depute of ——, dated ——, duly retoured to the chancery, and inſtrument of ſeiſine following thereon, dated the —— day of ——, and regiſtered in —— the —— day of ——. *And whereas* I ſtand infeft and ſeiſed, as immediate lawful ſuperior of the ſaid lands and others foreſaid, by virtue of a charter under the great ſeal, dated ——, ſealed ——, and inſtrument of ſeiſine following thereon, dated ——, regiſtered in —— the —— day of ——. *And*

——. *And whereas* it is my intention, that the right of property of the ſaid lands ſhould be conſolidated with the right of ſuperiority of the ſame, now ſtanding in my perſon as aforeſaid: *Therefore*, to have *made* and *conſtituted*, as I, by theſe preſents, *make* and *conſtitute*,

Procuratory of reſignation *ad remanentiam.*

and each of them, conjunctly and ſeverally, my lawful procurators, to reſign, as I hereby *reſign, ſurrender, ſimpliciter upgive, overgive*, and *deliver*, *all* and *whole*, &c. (the lands), together with all right, title, intereſt, claim of right, property, or poſſeſſion, which I, my authors, or predeceſſors, heirs, or ſucceſſors, had, or any ways may have, claim, or pretend thereto; in *the hands* of me the ſaid A. B. or my commiſſioners, in my name, *ad perpetuam remanentiam*, to the effect the right of property of the ſaid lands, veſted in my perſon, may be conſolidated with the right of ſuperiority of the ſame, already ſtanding in my perſon, and remain inſeparable therefrom, in all time to come; and both be holden of his Majeſty, and his royal ſucceſſors, in the ſame manner as if the property had never been ſeparated from the

ſuperiority, now in my perſon, as ſaid is, and thereupon to take inſtruments, and generally to do every other thing thereanent, which to the office of procurator in ſuch caſes belongs; ratifying hereby, and holding firm and ſtable, all and whatever things my ſaid procurator ſhall lawfully do, or cauſe to be done, in the premiſſes, in virtue hereof. (*Regiſtration* for preſervation, and *ſubſcription clauſe.*)

Obſervations on precept of *clare conſtat* by the heir, and procuratory of reſignation in his own favours, for conſolidating property and ſuperiority.

In caſe a perſon had procured a diſpoſition to lands, with obligement to infeft by two manners of holding, and had infeft *baſe*, but his ſon wanted to make up his titles holding *public*, if the lands held of the crown, a general ſervice would carry right to the unexecuted procuratory, whereupon a charter might be obtained from the crown, and infeftment taken; then the ſon might grant a precept of *clare conſtat*, in his own favours, procure himſelf infeft, and then reſign, in his own hands, *ad perpetuam remanentiam*, and regiſtrate the inſtruments; by theſe means, the property and ſuperiority would be veſted in his perſon, and conſolidated.—Though this is the proper feudal method,

ſome

ſome perſons are of opinion, that, if the precept of *clare conſtat* expreſsly purported to be granted for conſolidating the property with the ſuperiority, this, joined with the inſtrument of ſeiſine proceeding upon it, duly regiſtered, would be equivalent to a reſignation *ad remanentiam*. As this laſt method is attended with a conſiderable deal leſs expence, and is ſometimes followed in practice, I have judged it proper to give an example of it.

Precept of Clare Conſtat, *in one's own favour, for conſolidating the Property with the Superiority.*

Precept of clare conſtat, *in one's own favour, for conſolidating property and ſuperiority.*

C. B. Eſq; of E. immediate lawful ſuperior of the lands, tithes, and others aftermentioned, *becauſe*, by the authentic inſtruments and documents after ſpecified, *it clearly appears*, and is made known, that the deceaſed A. B. of E. my father, died laſt veſt and ſeiſed, at the faith and peace

Granter.

Predeceſſor's death at the faith and peace.

In what lands.

peace of our Sovereign Lord the King, in the fee of all and ſundry the lands, tithes, and others after mentioned, viz. (here inſert them), in manner more fully mentioned in, and conform to a diſpoſition of the ſaid lands and tithes, granted by J. K. Eſq; of L. dated ——, whereby he ſold and diſponed to the ſaid A. B. his heirs and aſſignees, heritably and irredeemably, *all* and *ſundry* the lands, tithes, and others before mentioned, and conform to the inſtrument of ſeiſine in favour of the ſaid A. B. by virtue of the precept of ſeiſine in the ſaid diſpoſition; and which inſtrument of ſeiſine is dated —— and regiſtered in —— —— the —— day of ——; *and that* I am duly ſerved and retoured neareſt and lawful heir of the ſaid A. B. my father, conform to my ſervice before the ſheriff of ——, dated ——, retoured to the chancery the ——; and I am thereby neareſt and lawful heir to my ſaid father, in the ſeveral lands, tithes, and others before ſpecified, and pertinents thereof; *and* that the ſame were holden by my ſaid deceaſed father, of and under the ſaid J. K. and are now holden of me, as ſuperior in chief, by

Upon what title.

Propinquity of the heir.

Of whom the predeceſſor held the lands, and that they are

virtue

virtue of a charter of the ſaid whole lands, tithes, and pertinents, granted by our Sovereign Lord the King, to me as heir foreſaid of my ſaid father, dated ——, ſealed ——, and proceeding upon the procuratory of reſignation contained in the foreſaid diſpoſition by the ſaid J. K. and my retoured ſervice before mentioned, whereby I have right to that procuratory, and by virtue of my infeftment upon the ſaid charter, dated ——, regiſtered in ——, the ——; *and that* it is my deſign and intention, that I ſhould be infeft in the right of property of the ſaid lands and tithes, which ſtood in the perſon of my ſaid father, by virtue of his ſaid infeftment upon the precept of ſeiſine, contained in the foreſaid diſpoſition by the ſaid J. K. (*a*); *and that* the ſaid right of property ſhould be conſolidated with the right of ſuperiority of the ſame, now ſtanding in my perſon, by virtue of the foreſaid charter to me, upon the procuratory of reſignation contained in the ſaid J. K.'s diſpoſition; and my infeftment following thereon (*b*): *Therefore*, to and each of you, jointly and ſeverally, my bailies, hereby ſpecially conſti-

preſently held of the granter. Upon what title.

Subſumption.

Precept of ſeiſine.

In what lands.

peace of our Sovereign Lord the King, in the fee of all and ſundry the lands, tithes, and others after mentioned, viz. (here inſert them), in manner more fully mentioned in, and conform to a diſpoſition of the ſaid lands and tithes, granted by J. K. Eſq; of L. dated ——, whereby he ſold and diſponed to the ſaid A. B. his heirs and aſſignees, heritably and irredeemably, *all* and *ſundry* the lands, tithes, and others before mentioned, and conform to the inſtrument of ſeiſine in favour of the ſaid A. B. by virtue of the precept of ſeiſine in the ſaid diſpoſition; and which inſtrument of ſeiſine is dated —— and regiſtered in —— —— the —— day of ——; *and that* I am duly ſerved and retoured neareſt and lawful heir of the ſaid A. B. my father, conform to my ſervice before the ſheriff of ——, dated ——, retoured to the chancery the ——; and I am thereby neareſt and lawful heir to my ſaid father, in the ſeveral lands, tithes, and others before ſpecified, and pertinents thereof; *and* that the ſame were holden by my ſaid deceaſed father, of and under the ſaid J. K. and are now holden of me, as ſuperior in chief, by virtue

Upon what title.

Propinquity of the heir.

Of whom the predeceſſor held the lands, and that they are

virtue of a charter of the ſaid whole lands, tithes, and pertinents, granted by our Sovereign Lord the King, to me as heir foreſaid of my ſaid father, dated ——, ſealed ——, and proceeding upon the procuratory of reſignation contained in the foreſaid diſpoſition by the ſaid J. K. and my retoured ſervice before mentioned, whereby I have right to that procuratory, and by virtue of my infeftment upon the ſaid charter, dated ——, regiſtered in ——, the ——; *and that* it is my deſign and intention, that I ſhould be infeft in the right of property of the ſaid lands and tithes, which ſtood in the perſon of my ſaid father, by virtue of his ſaid infeftment upon the precept of ſeiſine, contained in the foreſaid diſpoſition by the ſaid J. K. (*a*); *and that* the ſaid right of property ſhould be conſolidated with the right of ſuperiority of the ſame, now ſtanding in my perſon, by virtue of the foreſaid charter to me, upon the procuratory of reſignation contained in the ſaid J. K.'s diſpoſition, and my infeftment following thereon (*b*): *Therefore*, to and each of you, jointly and ſeverally, my bailies, hereby ſpecially conſti-

preſently held of the granter. Upon what title.

Subſumption.

Precept of ſeiſine.

conſtituted, to the effect after-written; *it is my will*, and I hereby deſire and require you, that, upon ſight hereof, ye paſs to the ground of the ſaid lands, and give heritable ſtate and ſeiſine, actual, real, and corporal poſſeſſion, of *all* and *ſundry* the lands, tithes, and others before ſpecified, to me the ſaid C. B. myſelf, as heir of my ſaid father (*c*), to the effect the right of property of the ſaid lands, tithes, and others, which ſtood in the perſon of my ſaid father, may be conſolidated with the right of ſuperiority of the ſame, already ſtanding in my perſon, and remain inſeparable therefrom, in all time coming; and be both holden of his Majeſty, and his royal ſucceſſors, in the ſame manner as if the ſaid property had not been ſeparated from the ſuperiority, now in my perſon (*d*); and that ye give ſuch ſeiſine, by delivering to me, or my certain attorney, in my name, bearer hereof, of earth and ſtone of the ground of the ſaid lands, a handful of graſs and corn for the ſaid teinds, and all other ſymbols requiſite and neceſſary: For doing whereof, I commit to you, jointly and ſeverally, as my bailies hereby ſpecially

ſpecially conſtituted for that effect, my full power, by this my precept (*e*). *In witneſs*, &c. and have ordered, &c.

Subſcription clauſe.

It would occur, that, in following the other method, the precept of *clare conſtat*, and *procuratory* for reſigning, might be contained in the ſame deed, and go on as the above letter (*a*), and leave out what is betwixt it and letter (*b*); then go on to (*c*), and leave out what is betwixt it and letter (*d*); then go on to (*e*), and add what follows:

Variations, if having procuratory annexed.

'*And whereas*, being ſo infeft in the property of the ſaid lands, it is alſo my intention, that the ſame ſhould be conſolidated with the right of ſuperiority of the ſaid lands, now ſtanding in my perſon, by virtue of the foreſaid charter to me, upon the procuratory of reſignation, contained in the ſaid J. K.'s diſpoſition, and my infeftment following thereon: *Therefore*, I hereby *make* and *conſtitute*

Additional narrative.

and each of them, conjunctly and ſeverally, my lawful procurators, to *reſign*, as I hereby *reſign*, *ſurrender*, and *overgive*, *all* and *ſundry* the foreſaid lands,

Procuratory of reſignation in the granter's own favours, *ad remanentiam.*

'tithes,

'tithes, and others, together with all right
'title, and intereſt, claim of right, proper-
'ty, and poſſeſſion, which I have, or can
'pretend thereto; in the hands of me the
'ſaid C. B. or my commiſſioners, in my
'name, *ad perpetuam remanentiam*, to the
'effect the right of property of the ſaid
'lands, tithes, and others, which ſtood in
'the perſon of my ſaid father, may be
'conſolidated with the right of ſuperiority
'of the ſame, already ſtanding in my per-
'ſon, and remain inſeparable therefrom, in
'all time to come, and both be holden of
'of his Majeſty, and his royal ſucceſſors
'in the ſame manner as if the property
'had never been ſeparated from the ſupe-
'riority, now in my perſon, as ſaid is; and
'thereupon to take inſtruments, and gene-
'rally to do every other thing thereanent
'which to the office of procuratory, in
'ſuch caſes, belongs; ratifying and hold-
'ing firm and ſtable, whatever my ſaid
'procurators ſhall lawfully do, or cauſe to
'be done, in the premiſſes, in virtue here-
'of.' (*Regiſtration* for preſervation; then
follows *ſubſcription clauſe*: 'In witneſs
'&c. and have ordered,' &c.

Regiſtration and ſubſcription clauſes.

Where

Where the perſon in whoſe favour an heritable bond, or right in ſecurity, is granted, chooſes to infeft holding baſe of the granter, upon his death his heir may get a precept of *clare conſtat* from the granter of the heritable bond, and be thereupon infeft in the annualrent and lands in ſecurity.

Precept of clare conſtat *to the heir in a right in ſecurity.*

Precept of Clare Conſtat *to the Heir in a Right in Security.*

A. B. of C. ſuperior of the annualrent and lands after mentioned, *whereas*, by an heritable bond, of date the —— day of ——, granted by me to B. C. —— in ——, now deceaſed, and inſtrument of ſeiſine following thereon, dated ——, regiſtered in ——, the ——, *it clearly appears*, and is known to me, *that* the ſaid deceaſed B. C. father of *my lovite* D. C. —— in ——, bearer hereof, died laſt veſt and ſeiſed, as of fee, at the faith and peace

Granter.

Narrative.

Predeceſſor's death at the faith and peace.

In what heritage.

of our Sovereign Lord the King, *not only* in *all* and *whole* an yearly annualrent of —, or ſuch an annualrent, leſs or more, as by law for the time ſhould effeir and correſpond to the principal ſum of —, yearly to be uplifted and taken, at the terms of Whitſunday and Martinmas, by equal portions, with — of penalty for each term's failure in payment of the ſaid annualrent; *furth* of *all* and *whole* my lands of — (here inſert them), *or furth* of any part or portion thereof, readieſt rents, maills, and duties of the ſame; *but alſo* in *all* and *whole* the ſaid lands and others foreſaid, themſelves, in ſecurity of the ſaid principal ſum, intereſt that might be due thereon, liquidate penalty, and termly failures, if incurred, and expences of infeftment to follow for ſecuring the ſaid B. C. and his heirs therein (if laid out by them); *and that* the ſaid D. C. is eldeſt lawful ſon of the ſaid B. C. his father, and ſo my ſaid lovit is neareſt and lawful heir to his ſaid father; *and* that the ſaid annualrent and lands are held of me as immediate lawful ſuperior thereof, in blench farm, for payment of a penny Scots money upon

Propinquity of the heir.

Of whom the annualrent and lands are held.

For what.

upon the ground of the ſaid lands, at the term of ——— yearly, if aſked allenarly, both for annualrent and lands. *Therefore*, to and each of you, conjunctly and ſeverally, my bailies in that part, ſpecially conſtituted, to the effect after mentioned, *it is my will*, and I charge you, that, on ſight hereof, ye paſs to the ground of the ſaid lands, and others foreſaid, and there give and deliver to the ſaid D. C. heritable ſtate and ſeiſine, with actual, real, and corporal poſſeſſion, *not only* of *all* and *whole* the foreſaid yearly annualrent, or ſuch an annualrent, leſs or more, as by law for the time ſhall effeir and correſpond to the ſaid principal ſum of ——— yearly to be uplifted and taken, at the terms foreſaid, by equal portions, with —— for each term's failure in payment of the ſaid annualrent; *furth* of *all* and *whole* the lands and others foreſaid, or furth of any part or portion thereof, readieſt rents, maills, and duties of the ſame; *but alſo* of *all* and *whole* the ſaid lands, and others foreſaid, themſelves, in ſecurity of the ſaid principal ſum, intereſt, penalty, and termly failures, if incurred, and expences of infeftment

Precept of ſeiſine.

feftment (if laid out by them), by delivery to the ſaid D. C. or his certain attorney, bearer hereof, of a little earth and ſtone of the ground of the ſaid lands, and a penny money for the ſaid annualrent, as uſe is; and this in nowiſe ye leave undone: The which to do, I commit to you, and each of you, conjunctly and ſeverally, my full power, by this my precept of ſeiſine, directed to you for that effect; *redeemable* always (here take in the clauſe of redemption, if it is conditioned to be inſert in the infeftment to follow on the right in ſecurity, if not ſay), in manner mentioned in the ſaid heritable bond and infeftment. *In witneſs*, &c. and have ordered, &c.

Subſcription clauſe.

Inſtruments of Seiſine and Reſignation upon the foregoing Charters by Progreſs, and Writings for conſolidating Property and Superiorities, or otherwiſe connected with them.

Inſtru-

Inſtrument of Reſignation in favorem, *in the hands of a Subject Superior.*

In the name of God, amen. Be it known to all men, by this preſent public inſtrument, that upon the —— day of ——, in the year of our Lord one thouſand ſeven hundred and eighty —— years, and of the reign of our Sovereign Lord George the Third, by the grace of God, King of Great Britain, France, and Ireland, Defender of the Faith, the —— year; in preſence (*a*) A. B. Eſq; of C. ſuperior of the lands and others after mentioned, within the houſe of P. O. —— in E. and within the —— room thereof; *and alſo* in preſence of me notary-public, and witneſſes after deſigned, ſubſcribing, *compeared* perſonally J. P. writer in E. as procurator for, and in name of C. D. of E. to the effect after ſpecified ſpecially conſtituted, by virtue of the procuratory of reſignation after mentioned; *and* there the ſaid J. P. as procurator for, and in name and

Invocation.

Date.

Place.

Compearance.

Reſignation.

and behalf foreſaid, with all due reverence and humility as became, *reſigned*, *ſurrendered*, *ſimpliciter upgave*, *overgave*, and *delivered*, *all* and *whole* (deſcribe the lands), lying within the pariſh of —— and ſheriffdom of ——, together with all right, title, and intereſt, which the ſaid C. D. his predeceſſors, or authors, heirs, or ſucceſſors, had, have, or might have, claim or pretend thereto; *in the hands* of the ſaid A. B. immediate lawful ſuperior thereof *in favour*, and for new infeftment of the ſame, to be made and granted to F. G. or H. (*b*), and his heirs and aſſignees whatſoever, heritably and irredeemably, in due and competent form as effeirs (*c*), by virtue of, and conform to the procuratory of reſignation, contained in a diſpoſition (*d*) of the ſaid lands by the ſaid C. D. to (1) the ſaid F. G. dated ——; *and that* by deliverance made to the ſaid J. P. as procurator foreſaid, of ſtaff and baton, as uſe is in the hands of the ſaid A. B. immediate lawful ſuperior thereof: Which reſignation being ſo made, and accepted by the ſaid A. B. he the ſaid A. B. immediately thereafter, gave, granted, and diſponed back

In favorem.

Acceptance.

back to the ſaid F. G. (*e*), his heirs and aſſignees whatſoever, heritably and irredeemably, the lands and others above mentioned, conform to the charter to be made and granted by the ſaid A. B. ſuperior foreſaid, to him thereanent, in all points; *and that* by redeliverance made by the ſaid A. B. of the ſaid ſtaff and baton, in the hands of the ſaid J. P. as procurator and attorney, for, and in name and behalf of the ſaid F. G.; *whereupon*, and upon all and ſundry the premiſſes, the ſaid J. P. as procurator and attorney foreſaid, for the ſaid F. G. aſked and took inſtruments in the hands of me notary-public, ſubſcribing. *Theſe things* were ſo done, within the houſe of the ſaid P. O. and —— room thereof, betwixt the hours of —— and —— forenoon, day, month, year of God, and of the King's reign reſpectively above mentioned, before, and in preſence of —— —— and ——, witneſſes to the premiſſes, ſpecially called and required.

Rediſpoſition by him;

and redelivery of the ſymbols.

Taking of inſtruments.

Place.

Hour.

Witneſſes.

If the procuratory is contained in a tailzie, at letter (*b*) take in the inſtitute and ſubſtitutes; at (*c*) inſert the conditions, proviſions, &c.; at (*d*), take in the name of

—if proceeding on a tailzie.

of the deed, containing the procuratory a
'a diſpoſition, or deed of entail;' and a
(*e*), ſay, 'the ſaid F. G. and his above
'mentioned.'

—if in the hands of a commiſſioner.

If reſignation is made in the hands of
commiſſioner, ſay at letter (*a*), 'P. Q. o
'R. commiſſioner, ſpecially conſtituted by
'A. B. Eſq; of C. ſuperior of the land
'and others under-written, conform to
'commiſſion in his favours, dated the —
'day of ———, and regiſtered in the book
'of council and ſeſſion the —— day o
'——— 178— years; whereby he is ſpe-
'cially empowered to receive reſignations
'and to grant charters, and all other wri-
'tings, agreeable to the laws of Scotland
'in manner more fully mentioned in the
'ſaid commiſſion; within,' &c. *in the hands of* the ſaid P. Q. as commiſſioner
ſpecially conſtituted by the ſaid A. B. &c.
and that by deliverance, &c. in the hands
of the ſaid P. Q. as commiſſioner foreſaid
for the ſaid A. B. &c. accepted by the ſaid
P. Q.; he the ſaid P. Q. as commiſſioner
foreſaid, immediately, &c.; *and* that by
redeliverance made by the ſaid P. Q. o
the ſaid, &c.

If the diſponee has aſſigned his right to a third perſon, ſay at figure (1) to ——, dated —— ; and which lands, and diſpoſition foreſaid, with the procuratory of reſignation therein contained, were ſold, diſponed, and aſſigned by the ſaid —— to the ſaid F. G. conform to diſpoſition and aſſignation, dated the —— day of ——. —if by an aſſignee.

If reſignation is made by an heir, who has acquired right to the procuratory by a general ſervice, ſay at figure (1), to ——, dated —— ; and to which diſpoſition and procuratory of reſignation therein contained, the ſaid F. G. has now right as heir ſerved and retoured to his ſaid father, conform to his retour, dated —— ; *and that*, &c. —if by an heir ſerved.

Inſtrument of Seiſine upon a Charter of Reſignation of Lands held of a Subject.

Inſtrument of ſeiſine on charter of reſignation.

In, &c. *in preſence*, &c. *having*, and in his hands *holding*, a charter of reſignation, Invocation.

Compearance.

Narrative.

dated the —— day of ——, made and granted by A. B. Eſq; of C. immediate lawful ſuperior of the lands after mentioned, whereby he *gave*, *granted*, and *diſponed*, and for him, his heirs, and ſucceſſors, perpetually *confirmed* to the ſaid D. E. his heirs or aſſignees whatſoever, heritably and irredeemably *all* and *whole* (inſert the lands); *and which lands* (here may be inſert the *quaequidem* at length, or briefly thus), formerly belonged heritably, and are held for payment in manner mentioned in the ſaid charter of reſignation (*b*), as the ſaid charter, containing the precept of ſeiſine after inſert, and ſeveral other clauſes, more fully bears, &c.

—if charter granted by a commiſſioner.

If by a commiſſioner, ſay at letter (*a*), 'granted by P. Q. of R. commiſſioner, 'ſpecially conſtituted by A. B. Eſq; of C. 'ſuperior of the lands after mentioned, 'conform to commiſſion in his favours, 'dated, &c. recorded,' &c.

—upon a charter in caſe of *baſtardy*, or *ultimus haeres*.

Inſtrument of ſeiſine upon a charter in a caſe of *baſtardy*, or *ultimus haeres*, will differ in nothing from the above; except, in mentioning the charter, leave out the words *of reſignation*.

If

If the charter contain a clause of *novodamus*, say at letter (*b*) 'as the said charter 'containing a clause of *novodamus* of the 'foresaid lands, and others before written, 'the precept of seisine,' &c.

'—if a clause of *novodamus*.

Instrument of Seisine upon a Charter of Adjudication.

—*upon a charter of adjudication.*

In, &c. *having*, and in his hands *holding*, a charter of adjudication, dated the —— day of ——, made and granted by A. B. of C. superior of the lands and others after mentioned, whereby the said A. B. *gave*, *granted*, and *disponed*, to the said D. E. &c. heritably but redeemably, conform to the reversion of the law competent by act of parliament, *all* and *whole* (insert the lands, and go on as in *instrument of seisine* on *charter of resignation*.)

But if on a *charter on decreet of adjudication in implement*, mention the charter to be a charter of adjudication in implement, and

If in implement.

and ſay, 'heritably and irredeemably, *all* 'and *whole*,' &c.

—if a charter of ſale. If a charter of ſale, mention it to be ſuch, and ſay, 'heritably and irredeemably,' &c.

—upon a charter of confirmation, and precept of *clare conſtat.*

Inſtrument of Seiſine upon a Charter of Confirmation, and Precept of Clare Conſtat.

Invocation, &c. Compearance of the vaſſal, *In*, &c. *in preſence*, &c. *compeared* perſonally, upon the ground of the lands after mentioned, J. D. —— in ——, to whom, and in whoſe favours, the charter of confirmation, containing the precept of ſeiſine, commonly called a precept of *clare conſtat* after inſert, is made and granted, *where compeared* alſo perſonally

and of the ſuperior's bailie. bailie in that part, ſpecially conſtitute by the ſaid precept of ſeiſine, called a precept of *clare conſtat*; the ſaid J. D. *having*, and *holding* in his hands, a charter of confirmation, containing the ſaid precept of ſeiſine, called a precept of *clare conſtat* after inſert, of the date mentioned in

Narrative.

in the ſubſcription clauſe thereof, *made* and *granted* by (*a*) A. B. Eſq; of C. ſuperior of the lands and others after ſpecified, *ratifying*, *approving*, and *confirming*, a diſpoſition, bearing date the —— day of —— made and granted by G. H. —— in —— heritable proprietor of the lands and others thereby diſponed, to and in favour of the now deceaſed C. D. —— in ——, and his heirs and aſſignees, heritably and irredeemably, of *all* and *whole*, &c. (take in the lands), together with the obligement to infeft, and precept of ſeiſine contained in the ſaid diſpoſition, and inſtrument of ſeiſine following thereon, in favours of the ſaid C. D. dated the —— day of ——, and regiſtered in the —— regiſter of ſeiſines, kept at —— the —— day of —— 17—, and that in the whole heads, articles, clauſes, tenors, and contents of the ſaid diſpoſition and infeftment; as the ſaid charter of confirmation, containing the ſaid precept of *clare conſtat* after inſert, more fully bears: *Which* charter, containing the ſaid precept, the ſaid J. D. exhibited and preſented to the ſaid

Vaſſal's preſenting the warrant to the bailie.

bailie foreſaid, by virtue of the ſaid

Requiſition to him to execute his office.

Acceptance by him.

Receipt of the warrant.

Delivery to the notary.

Publication by him.

Inſertion of the precept.

Delivery of ſeiſine.

ſaid precept of ſeiſine, deſiring him to proceed to the due execution of his office of bailiary thereby committed to him: *Which* deſire the ſaid bailie finding reaſonable, he received the ſaid charter, containing the precept of *clare conſtat*, into his hands, and delivered the ſame to me notary-public, ſubſcribing, to be read and publiſhed in preſence of the witneſſes ſubſcribing, then by-ſtanding, which I accordingly did; and of which precept of *clare conſtat* the tenor follows: '*And whereas*,' &c. (inſert the precept.) After reading and publiſhing of which charter and precept of *clare conſtat*, above inſert, therein contained, the ſaid bailie in that part foreſaid, by virtue thereof, and of his office of bailiary thereby committed to him, *gave* and delivered heritable ſtate and ſeiſine, with actual, real, and corporal poſſeſſion, of *all* and *whole* the lands and others above mentioned, with the pertinents, to the ſaid J. D. as heir (*a*) foreſaid, by deliverance to himſelf perſonally preſent, of a little earth and ſtone of the ground of the ſaid lands, as uſe is, after the form and tenor of the ſaid precept in all points:—

Where-

Whereupon, and upon all and ſundry the premiſſes, the ſaid J. D. aſked and took inſtruments in the hands of me notary-public, ſubſcribing. *Theſe* things were ſo done upon the ground of the ſaid lands reſpectively, between the hours of —— and —— noon, of the day of the month, year of God, and of the King's reign *reſpective* above written; before and in preſence of —— and —— witneſſes to the premiſſes ſpecially called and required.

Attorney's taking of inſtruments.

Place.

Hour.

Witneſſes.

If the charter was granted by a commiſſioner, ſay at letter (*a*), —— commiſſioner ſpecially conſtituted by A. B. Eſq; of C. ſuperior of the lands and others after mentioned, conform to commiſſion in his favours, dated, &c. regiſtered, &c.

Inſtrument of ſeiſine upon the charter of confirmation, and precept of *clare conſtat* in favour of an heir of tailzie, will differ in nothing except in narrating the diſpoſition or deed of tailzie, which will be according to the warrant, and in the *delivery of ſeiſine*, at letter (*a*), the heir may be mentioned 'as neareſt and lawful heir of tail-' zie and proviſion to his ſaid deceaſed fa-' ther.'

Inſtru-

—upon a precept of *clare conſtat.*

Inſtrument of Seiſine upon a Precept of Clare Conſtat.

Invocation, &c. Compearance. Narrative.

In, &c. *in preſence*, &c. *compeared*, &c. in whoſe favours the precept of ſeiſine, commonly, &c. *holding* the ſaid precept of ſeiſine, commonly called, &c. granted by A B. Eſq; of C. ſuperior of the lands and others under written, to and in favour of the ſaid J. D. as heir of the deceaſed C. D. of E. his father, of *all* and *whole* the lands of ——— and others after mentioned, of the date, tenor, and contents under written: *Which* precept of ſeiſine, commonly called a precept of *clare conſtat*, the ſaid J. D. exhibited, &c. he accepted and received the ſaid precept into his hands, &c. tenor follows: 'A. B. Eſq; of C.' &c. After reading and publiſhing of which precept of *clare conſtat*, &c.

Vaſſal's delivery to the bailie. Acceptance by him. Inſertion of the precept. Delivery of ſeiſine.

Inſtru-

Inſtruments of Seiſine upon the Precept of Clare Conſtat, *written in Latin.*

—upon a precept of *clare conſtat* in Latin.

In Dei nomine, amen. Per hoc praeſens publicum inſtrumentum, cunctis pateat et ſit notum, quod anno ab incarnatione Domini milleſimo ſeptingenteſimo octogeſimo —, menſis vero ——, die —— regnique S. D. N. Georgii Tertii, Magnae Britanniae, Franciae, et Hiberniae, Regis, Fideique Defenſoris, anno ———: *In mei* notarii publici teſtiumque ſubſcriben. praeſentia perſonaliter *comparuit* ſuper fundum terrarum aliorumque ſubtus mentionat. J. D. de E. cui et in cujus favorem praeceptum ſaſinae, vulgo praeceptum de *clare conſtat* vocat. poſtea inſertum, eſt factum et conceſſum. *Et ibidem etiam* perſonaliter *comparuit* balivis in hac parte per dict. praeceptum ſaſinae, praeceptum de *clare conſtat* vocat. ſpecialiter conſtitut. dictus J. D. *habens*, et in ſuis manibus *tenens*, dictum praeceptum

Invocation.

Date.

King's reign.

Compearance of the vaſſal on the ground of the fee,

and of the ſuperior's bailie.

Narrative.

ſaſinae, (vulgo praeceptum de *clare conſtat* vocat.) factum et conceſſum per A. B. de C. ſuperiorem terrarum aliorumque infra ſcript. in favorem dicti J. D. tanquam haeredis quond. C. D. de E. ſui patris, de *totis* et *integris* terris de —— aliiſque ſubſcriptis, de data, tenore, et contentis ſubſcriptis. *Quod* quidem ſaſinae praeceptum (vulgo praeceptum de *clare conſtat* vocat.) dictus J. D. praedicto balivo, per dictum praeceptum ad effectum ſubtus mentionat. ſpecialiter conſtituit. ut dictum eſt, *exhibuit* et *praeſentavit*, eumque rogavit, ut ſuum balivatus officium in eodem ſaſinae praecepto contentum debitae executioni demandaret: Quiquidem balivus ſciens et percipiens dictum deſiderium fore juſtum, rationique conſonans, dictum praeceptum in manibus ſuis recepit, mihique notario publico ſubſcriben. perlegendum, publicandum, et in vulgari ſermone exponendum, coram teſtibus aſtantibus, dedit, tradidit, et deliberavit: Quod feci; cujuſquidem praecepti ſaſinae tenor ſequitur: 'A. B. de C. armiger,' &c. (inſere praeceptum); *poſt* cujuſquidem praecepti ſaſinae ſupraſcripti perlectionem, publicationem,

Vaſſal's preſenting the precept to the bailie, and requiring him to act.

Acceptance by the bailie.

Delivery to the notary to be publiſhed.

Publication.

Inſertion of the precept.

Delivery of ſeiſine.

tionem, et expoſitionem, praefatus balivus antedict. virtute ejuſmodi et officii balivatus ſibi per idem commiſſi, ſtatum, ſaſinam haereditariam, pariterque poſſeſſionem actualem, realem, et corporalem, *totarum* et *integrarum* praedict. terrarum et pertinen. earundem jacen. et deſcript. ut ſupra dicto J. D. tanquam haeredi antedict. perſonaliter praeſenti, per terrae et lapidis fundi dict. terrarum, ut moris eſt, ſecundum tenorem dicti praecepti de clare conſtat, in omnibus punctis, tradidit et deliberavit, nemine contradicente ſeu in contrarium opponente. *Super quibus* omnibus et ſingulis praemiſſis, dictus J. D. unum vel plura publica inſtrumenta a me notario publico ſibi fieri petiit. *Acta erant* haec, ſuper fundum dict. terrarum, horas inter ——— et —— poſt meridiem, die menſis, anno Domini, regnique Regis, quibus ſupra; *praeſentibus* ibidem et teſtibus ad praemiſſa ſpecialiter vocatis et requiſitis.

Taking of inſtruments.

Place. Hour.

Witneſſes.

Inſtru-

Inſtrument of Reſignation in one's own favour ad remanentiam.

Invocation. *In the name of God, amen. Be it known* to all men, by this preſent public inſtrument, that upon the —— day of —— Date. years, and of the reign of our Sovereign King's reign. Lord George the Third, by the grace of God, King of Great Britain, France, and Ireland, Defender of the Faith, the —— year. *In preſence* of A. B. Eſq; of C. ſuperior of the lands and others under written, and of me notary-public, and witneſſes after deſigned, ſubſcribing; Compearance. *compeared* perſonally within the manſion-houſe of C. Place. and in the dining-room thereof, D. E. —— in F. as procurator for the ſaid A. B. ſpecially conſtitute, by virtue of a principal procuratory of reſignation *ad remanentiam*, made and granted by the ſaid A. B. Warrant to the procurator. in favour of himſelf, of date the —— day of ———, of all and ſundry the lands and others herein after reſigned; *and* there the ſaid

ſaid D. E. as procurator foreſaid, by virtue of the ſaid procuratory of reſignation, with all due reverence and humility as became, duly and lawfully *reſigned*, *ſurrendered*, ſimpliciter *upgave*, *overgave*, and *delivered*, *all* and *whole* (inſert the lands), together with all right, title, intereſt, claim of right, property, or poſſeſſion, which the ſaid A. B. his authors or predeceſſors, heirs or ſucceſſors, had, or any ways might have, claim, or pretend thereto; *in the hands* of the ſaid A. B. immediate lawful ſuperior of the ſaid lands, *ad perpetuam remanentiam*, to the effect the right of property of the ſaid lands, veſted in his perſon, might be conſolidated with the right of ſuperiority of the ſame, already ſtanding in his perſon, and remain inſeparable therefrom in all time to come, and both be holden of his Majeſty and his royal ſucceſſors, in the ſame manner as if the property had never been ſeparated from the ſuperiority, now in his perſon, as ſaid is, conform to the ſaid principal procuratory of reſignation *ad remanentiam*, produced, ſeen, and read over, in preſence of me notary-public and witneſſes,

Reſignation

ad remanentiam.

Acceptance. witneſſes, ſubſcribing; *and* that by deliverance made by the ſaid D. E. as procurator foreſaid, of ſtaff and baton, as uſe is, in the hands of the ſaid A. B. himſelf, who accepted and received the ſame to the effect foreſaid; *and thereupon*, and upon all and ſundry the premiſſes, the ſaid A. B. aſked and took inſtruments, one or more, as many as needful, in the hands of me notary-public ſubſcribing. *Theſe* things were ſo done, within the manſion-houſe of C. and room foreſaid, betwixt the hours of —— and —— afternoon, of the day of the month, year of God, and of the King's reign, reſpectively firſt above written, *in preſence* of ——— and ——— witneſſes to the premiſſes, ſpecially called and required.

Taking of inſtruments.

Place.

Hour.

Witneſſes.

It is neceſſary to be obſerved, that all inſtruments of reſignation *ad remanentiam* muſt be regiſtered in 60 days after reſignation is made, by 1669, c. 3.

Inſtrument of ſeiſine upon the precept of *clare conſtat* in one's own favour.

Inſtrument of ſeiſine upon the precept of *clare conſtat* in one's own favours will differ in nothing from the example given, but in mentioning that it is in the perſon's own favour.

In

In caſe the above mentioned variations are made thereon, the whole writings may either be inſert in the ſeiſine, or it would appear that the procuratory of reſignation *ad remanentiam* might be paſſed over, and the ſubſcription clauſe and ſubſcriptions of the granter and witneſſes added.

—of reſignation on procuratory annexed to it.

The inſtrument of reſignation upon the procuratory annexed to the precept, will differ in nothing from the laſt example, unleſs probably in mentioning that the procuratory is annexed to a precept of *clare conſtat*, by the granter in his own favour.

—of ſeiſine on precept of *clare conſtat* to the heir in a right in ſecurity.

Inſtrument of ſeiſine upon precept of *clare conſtat* to an heir in a right in ſecurity, inſerts the whole precept in the inſtrument, as in the example given, and the delivery of ſeiſine is in terms of the precept.

TITLE

TITLE XII.

Inveſtiture in Royal Boroughs, and others of a ſingular nature.

ALTHOUGH the preceding Titles contain the general principles and form of moſt part of the conveyances of property and ſecurities thereon, uſed in Scotland, yet there are a few exceptions from the general rules, which it may be proper to take notice of; the moſt obvious and important whereof is the method of inveſtiture within borough.

In

In royal boroughs, in place of reſignation, and an inſtrument taken thereon, and then a charter of reſignation, and inſtrument of ſeiſine upon it; reſignation is made in the hands of one of the bailies, who thereupon directly gives ſeiſine; all which is contained in one inſtrument. This inſtrument can only be ſigned by the town-clerk as notary.

Inſtrument of Seiſine upon a Diſpoſition to Subjects within Burgh holding Burgage.

Inſtrument of ſeiſine on diſpoſition to tenement within borough.

Invocation, &c.

In the name, &c. *in preſence* of me notary public, and witneſſes after deſigned, ſubſcribing, *compeared*

Compearance of the bailie

as one of the bailies of the burgh of who paſſed with us to that tenement of land which ſome time pertained to ——, afterwards to ——, and thereafter to A. B. ——, lying, &c. bounded, &c. *and there* L. M. —— in ———, procurator, ſpecially conſtitute by the ſaid A. B. by the

and procurator.

procuratory of reſignation, contained in a diſpoſition thereof by him, in favour of G. H. —— in ——, his heirs or aſſignees; dated, &c. produced and read over upon the ground of the ſaid tenement, with all due reverence and humility as became, purely and ſimply, by ſtaff and baton, *reſigned* and *ſurrendered all* and *whole* the ſaid tenement of land, with the pertinents, *in the hands* of the ſaid bailie foreſaid, as in the hands of his Majeſty, immediate lawful ſuperior thereof; *in favour*, and for new infeftment of the ſame, to be made, given, and granted, to the ſaid G. H. and his foreſaids, heritably and irredeemably, in due and competent form. Which reſignation being duly made and admitted, the ſaid bailie, in virtue of his office, and at the ſpecial deſire of the ſaid L. M. as procurator reſigner foreſaid, gave and delivered to the ſaid G. H. heritable ſtate and ſeiſine, actual, real, and corporal poſſeſſion, of *all* and *whole* the ſaid tenement of land, with the pertinents, lying, bounded, and deſcribed, in manner above mentioned; by delivery to P. Q. —— in ——, as attorney for, and in his

Reſignation.

Acceptance thereof.

Delivery of ſeiſine to the diſponee's attorney.

his name, of a little earth and ſtone of the ground of the ſaid tenement, after the form and tenor of the ſaid diſpoſition, in all points: *Whereupon*, and upon all and ſundry the premiſſes, &c.

Taking of inſtruments.

The heir is alſo inveſted in a manner different from an heir in any other ſubject, and the whole procedure included in the inſtrument thus:

—if to the heir cognoſced by haſp and ſtaple.

In the name, &c. *in preſence* of me notary-public, and witneſſes after deſigned, ſubſcribing, *compeared*

Invocation, &c.

one of the bailies of the burgh of ——, who with us and A. B. eldeſt lawful ſon and heir of the deceaſed J. B. —— there, went to the tenement of houſe and yard, ſome time pertaining to —— thereafter to ——, and thereafter to the ſaid J. B. lying, &c. bounded, &c. and there the ſaid bailie, in virtue of his ſaid office, *cognoſced* and *entered* the ſaid A. B. as ſon and heir to the ſaid J. B. his father, to the actual, real, and corporal poſſeſſion of the ſaid tenement of houſe and yard, lying, bounded, and deſcribed, in manner above mentioned, by delivering to him the haſp and ſtaple of the door of the ſaid tenement, and inveſted

Compearance of the bailie and of the heir.

Cognoſing of the heir.

veſted and ſeiſed the ſaid A. B. as heir foreſaid, heritably therein, as uſe is, in burghs royal, with regard to the heirs of burgeſſes in like caſes (*a*). *Whereupon*, and upon all and ſundry the premiſſes, the ſaid A. B. as heir foreſaid, aſked and took inſtruments, in the hands of me notary-public, ſubſcribing, &c.

Taking of inſtruments, &c.

—if to a purchaſer from the heir before entry.

And, in caſe the heir has made over the tenement before entry, the purchaſer's infeftment may be included in the ſame inſtrument, which will go on at letter (*a*); *and* thereafter L. M. —— in ——, as procurator ſpecially conſtitute by the ſaid A. B. &c. (as in the firſt example.)

Reſignation.

Obſervation on feu rights within borough.

It may be here obſerved, that leaſes of the rents, or revenues of boroughs royal, whether proceeding from lands, fiſhings, mills, &c. for more than three years, are prohibited by 1491, c. 36.; but as there is no prohibition with regard to leaſes, or feus, of the lands themſelves, theſe may be effectually granted by the magiſtrates, notwithſtanding the ſtatute, *New Coll.* 22. And it has become a pretty common practice, for the royal boroughs to alien part of their burgage lands, to be held feu of themſelves:

themſelves: But even although, after doing ſo, they were by connivance to convey the ſuperiority to a purchaſer, ſo as to make way for his obtaining a charter from the crown, that would not confer on him a right to vote, or entitle him to be enrolled as a freeholder. The lands ſtill remain truly burgage, and their owners are repreſented by the member for the borough: June 17. 1777, Sir Robert Abercromby *contra* Alewood and others.

—on the method of election in boroughs.

The right of election in boroughs is lodged, not in the whole body of the inhabitants, but in the magiſtrates and council, who are themſelves choſen according to the *ſet* (conſtitution) or uſage of the borough; which is different in different places.—Excepting Edinburgh, no ſingle borough in Scotland has the power of ſending a member to parliament. They are divided into diſtricts, a certain number to a diſtrict; where it is an even number, as four, they have the caſting vote by turns: Each of the boroughs chuſe a delegate, and the delegates meet at the borough having the caſting vote for the time, and elect the member.

Another

—on the method of election in the ſhire of Sutherland.

Another exception from the general nature of the election laws, is the method of election uſed in the ſhire of Sutherland, which being moſtly held of one or two noble families, the vaſſals of theſe families have been allowed to elect a repreſentative to parliament, and with only half the valuation required in other countries. Leſt this ſhire ſhould have been altogether without a repreſentative, only one perſon can vote for the ſame lands; ſo that, where there is a proper freeholder there, his vaſſal cannot alſo have a vote. It does not appear that this can occaſion any variation in their forms of conveyance, neceſſary to be taken notice of.

—on the right in manſes and glebes.

An exception alſo from the before mentioned manners of holding, and forms of tranſmiſſion, is the right which miniſters have in their manſes and glebes, which are *allodial*, (held independent of any ſuperior), and the right to them perfectly voted by the preſbytery's deſignation, without any grant from the crown. It has been conſidered as a received principle, and may be with ſome juſtice conſidered as ſuch ſtill, that the church never dies, the rights

to

to clergymen being of the nature of grants to corporations. Thus the right to a manſe and glebe being once veſted in an incumbent, it goes to his ſucceſſor in office as ſoon as appointed, in the ſame manner as it was poſſeſſed by him. Nearly to this purpoſe is what is ſtated in the Commentary on the Law of England, which conſiders the clergyman as a *corporation ſole*.

—on the udal right in Orkney and Zetland.

Lands in Orkney and Zetland are enjoyed by the *udal* right, which is nearly the ſame as *allodial*. "When theſe iſlands were firſt transferred from the crown of Denmark to that of Scotland, the right of their lands was held by natural poſſeſſion, and might be proved by witneſſes, without any title in writing; which had probably been their law formerly, when they were ſubject to Denmark: And to this day the lands, the proprietors of which have never applied to the Sovereign, or thoſe deriving right from him, for charters, are enjoyed in this manner; but, where the right of lands in that ſtewartry has been once conſtituted by charter and ſeiſine, the lands muſt, from that period, be governed by the common feudal rules; except

except church-lands, whoſe valuation is no higher than L. 20 Scots, the proprietors of which are allowed, by 1690, c. 32, to enjoy their property by the udal right, without the neceſſity of renewing their infeftments." Erſk. b. II. tit. 3. § 18. 2d edit.

—on the kindly tenant rights of Lochmaben.

I ſhall only mention one other exception. In a declarator at the inſtance of the crown's kindly tenants of Lochmaben, the Lords found, from ancient documents produced, that the purſuers, though having neither charter nor ſeiſine, but as tenants paying their rents to the Viſcount of Stormont, had ſuch a right of property in the lands that they could not be removed, and might diſpone their rights to extraneous perſons; 24th Nov. 1726: Which deciſion was affirmed in the Houſe of Lords. It is not collected, but is referred to in the Fac Col. July 4. 1781, *M'Kenzie* againſt *Gullen and others*. Theſe kindly tenants ſeem to have been of the ſame kind as copy-holders in England. The following *bond and diſpoſition under reverſion*, will ſufficiently exemplify the nature of their conveyances to extraneous perſons.

Bond

Bond and Diſpoſition by a Kindly Tenant.

Bond and diſpoſition under reverſion by a kindly tenant.

I, A. B. in ——, in the pariſh of Lochmaben and ſhire of Dumfries, grant me by theſe preſents to have borrowed and received from C. D. —— in ——, the ſum of —— Sterling money; which ſum of —— Sterling of principal, I hereby bind and oblige me, my heirs, executors, and ſucceſſors whatſoever, thankfully to content and pay to the ſaid C. D. his heirs or aſſignees, betwixt the date hereof and the term of Whitſunday next, with —— Sterling of penalty and liquidate expences, in caſe of failure; together alſo with the due and ordinary annualrent of the ſaid principal ſum, from and after the term of —— to the ſaid term of payment, and thereafter at the term of —— yearly, beginning the firſt term's payment of the ſaid annualrent at ——, in the year ——, for the year immediately preceding, and ſo forth yearly during the not payment

Granter.

Receiver.

Perſonal obligation.

of the ſaid principal ſum, and not redemption after mentioned, with ——— Sterling of penalty and liquidate expences for every term's failure. *And for* their further ſecurity, and more ſure payment of the foreſaid principal ſum, penalty, annualrents, and termly failures, that may become due and be incurred, I the ſaid A. B. kindly tenant of the lands and others after mentioned, *do* hereby *alienate* and *diſpone*, from me, my heirs and ſucceſſors, *to* and *in favour* of the ſaid C. D. the kindneſs and kindly tenant right of the juſt and equal half of the mailing of land called ———, belonging to me, and pertinents of the ſame, lying within the twenty-ſhilling land of Lochmaben and ſhire of Dumfries, and of all other lands belonging to me the ſaid A. B. within the ſaid pariſh of Lochmaben, bounded in manner mentioned in the rights and ſecurities thereof; together with all kindneſs and kindly tenant right, rental right, or other right or title petitory or poſſeſſory, I have or can pretend thereto, during the not redemption: *Surrogating* and *ſubſtituting* the ſaid C. D. and his foreſaids, in my full right and place of the premiſſes;

Diſpoſitive.

premiſſes; with power to them, their ſervants, tenants, and others in their names, to enter into the poſſeſſion of the ſaid lands and others foreſaid, output and input tenants therein, ſet, uſe, and diſpoſe thereof, as their own kindly tenant right lands, at their pleaſure, in all time coming. *And* I hereby make and conſtitute him, and his foreſaids, my very lawful and undoubted aſſignees, *not only* in and to the whole writs, evidents, and ſecurities of the lands before diſponed, conceived in favour of me, my authors and predeceſſors, of and concerning the ſame, with the whole clauſes, obligements, and conditions, contained in the ſaid writings, with all that has followed or may follow thereon; *but alſo* in and to the rents, maills, profits, and duties of the lands and others foreſaid, from and after the ſaid term of ——, during the not redemption; with power to them to intromit with, uplift, and receive the ſaid rents, maills, and duties, and writs and evidents, and, if need be, to call and purſue therefor; and, on payment and delivery, receipts and diſcharges to grant, which ſhall be ſufficient; and generally every other thing

Aſſignation to the writs

and rents.

thing anent the premiſſes to do, which I could have done before granting hereof:

Warrandice.

Which diſpoſition and aſſignation, with the infeftment, or inſtrument of poſſeſſion, to follow hereon, I bind and oblige me, and my foreſaids, to warrant as follows, viz. as to the lands and writings at all hands; and as to the rents, from my own acts and deeds allenarly, done or to be done in prejudice hereof:

Proviſion.

Providing and *declaring* always, as it is hereby ſpecially *provided* and *declared*, that the ſaid C. D. and his foreſaids, ſhall be bound and obliged, by acceptance hereof, to pay the accuſtomed teinds and public burdens, in uſe to be paid out of the ſaid lands, to the Viſcount Stormont, and others having right thereto, while they poſſeſs the ſame; *and* that the lands, and others foreſaid, are and ſhall be redeemable by me, my heirs and aſſignees, from the ſaid C. D. and his foreſaids, by good and thankful payment making, at the ſaid term of —— next, or any other term of Whitſunday or Martinmas thereafter, or by conſignation in manner after mentioned, of the foreſaid principal ſum of —— Sterling, —— Sterling of penalty, if incurred,

Clauſe of reverſion.

incurred, annualrents of the ſaid principal ſum that may be become due at the time, and termly failures aforeſaid that may be incurred through not payment of the ſaid annualrents; upon premonition always of ſixty days before to be made to the ſaid C. D. or his foreſaids, perſonally, or at their dwelling-places, in preſence of a notary and witneſſes as effeirs; the place of redemption to be in the tolbooth, or common court-houſe of Dumfries, where the ſheriff-courts are kept, and the conſignation; in caſe of refuſal, or abſence, to be in the hands of the provoſt, or any one of the bailies, of the ſaid borough of Dumfries, or of any other reſponſal perſon in the ſaid borough for the time, betwixt the hours of two and four afternoon of the day of redemption, to be made forthcoming at the peril and hazard of the conſigner; for uſing of which order of redemption theſe preſents, or an extract and copy hereof, or of the infeftment or inſtrument of poſſeſſion, to follow hereupon, ſhall ſerve as a ſufficient letter of reverſion. *And further*, that notwithſtanding of the ſaid heritable ſecurity, it ſhall be lawful to the ſaid C. D. and his foreſaids,

Declaration, that it ſhall be lawful to uſe diligence;

foreſaids, at the foreſaid term of payment, or any other term or time thereafter they pleaſe, to uſe all manner of execution and diligence, perſonal or real, on the perſonal obligement above written; and that their uſing diligence and execution, perſonal or real, or both, ſhall nowiſe looſe, alter, invalidate, or infringe the ſaid heritable ſecurity, but the ſame ſhall ſubſiſt and be effectual, the one without prejudice of the other, ay and while full and complete payment be made of the ſums of money above written, without any confuſion or extinction of rights whatever: *And*, in caſe he, or his foreſaids, ſhall, in virtue of the ſaid heritable ſecurity, real diligence, or aſſignation to the maills and duties aforeſaid, enter into poſſeſſion, either civil or natural, of the mailing and others above diſponed, yet they ſhall not be liable or obliged to continue their poſſeſſion, but may relinquiſh and give over, and again reaſſume and take up the poſſeſſion foreſaid, from time to time, as they pleaſe; and ſhall only be liable to impute and aſcribe toward payment of the ſums foreſaid, their own real and actual intromiſſions with

and that they ſhall only be liable for intromiſſions.

with the rents, maills, and duties of the ſaid mailing, and others remaining free in their hands, after deduction and allowance of all feu-duties, teinds, ſupplies, miniſter's ſtipends, and other burdens affecting the ſaid mailing and others, any manner of way; and alſo after deduction and allowance of their expences anent the premiſſes, conform to an account under their hands, or under the hands of the deburſers, without the neceſſity of any other vouchers; and that they ſhall not be liable for ultimate or exact diligence in recovery of the ſaid rents, but only ſuch diligence as they ſhall think proper; and ſhall not be liable for omiſſions, any law or practice to the contrary, which is hereby diſpenſed with: *And* I conſent to the regiſtration hereof in the books of council and ſeſſion, or others competent, that letters of horning, on ſix days charge, and other executorials needful, in form as effeirs, may paſs hereon; conſtituting my procurators. *Attour*, I hereby conſtitute and appoint and each of them, my bailies in that part, conjunctly and ſeverally, to paſs, in ſight

Regiſtration.

Precept of poſſeſſion.

ſight hereof, to the ground of the mailing of land and others above diſponed, and there, before a notary and witneſſes as effeirs, to enter the ſaid C. D. into the actual, real, corporal, and natural poſſeſſion of the ſame, by delivery to him, or his certain attorney, in his name, bearer hereof, of earth and ſtone of the ſaid mailing of land, as uſe is, redeemably always, and under reverſion, by me, and my foreſaids, from him, and his foreſaids, in terms of the clauſe of reverſion above written, and with and under the proviſions above inſert; and ſee that this in nowiſe ye leave undone. The which to do, I commit to you, and each of you, full power by this my precept. *In witneſs*, &c.

Subſcription clauſe. Obſervation.

The inſtrument hereupon will be ſo extremely ſimilar to that upon a bond and diſpoſition of lands under reverſion, holden in the common manner, that it will be unneceſſary to give an example, the more eſpecially as this deed can very ſeldom occur in practice, and is only taken notice of as an exception from the common principles and practice.

In the caſe of *M'Kenzie* againſt *Gullen* and *others*, *July* 4. 1781, immemorial poſſeſſion, without a feudal title, was not found ſufficient to defend from a removing. The defenders in this action were inhabitants of the village of Seaton, on the eſtate of Winton, who had exerciſed every right of property in their ſmall tenements. But it was pled that this caſe differed from that of Lochmaben, in the rental being from a ſubject, and that rentals from ſubjects were never granted as permanent rights.

TITLE XIII.

Extinction of Temporary and Redeemable Real Rights.

HAVING treated at considerable length of the constitution and transmission of heritable rights, I come now to take notice in what manner certain of these rights are extinguished:—With respect to a great part of them, the constitution of one person's right is the extinction of another's; when the one is invested, the other is divested: This title may therefore be confined to temporary and redeemable rights

rights. Temporary rights are extinguiſhed by the elapſe of the time for which they were granted; thus a liferent-right is extinguiſhed by the death of the liferenter. *Real redeemable rights*, acceſſory to perſonal obligations, as *rights in ſecurity*, by payment or intromiſſion, as well as by confuſion, where the ſame perſon becomes both debtor and creditor, or by novation in taking a new ſecurity: All theſe rights, as alſo truſt-rights, are likewiſe extinguiſhable by *conſent* of the perſon veſted in the right thereof, expreſſed by a writing, termed a *diſcharge and renunciation.*

Diſcharge and Renunciation of a Liferent Superiority.

Renunciation of a liferent ſuperiority.

Be it known to all men by theſe preſents, me C. D. ———, *whereas* by charter of reſignation, made and granted by our Sovereign Lord the King, with the ſpecial advice and conſent of the Barons of his Exche-

Premiſſes.

Granter.

Narrative.

Exchequer in Scotland, dated ——, ſealed ——, our ſaid Sovereign Lord, with advice and conſent foreſaid, *gave*, *granted*, and *diſponed*, and for himſelf, and his royal ſucceſſors, perpetually *confirmed* to A. B. of C. his heirs and aſſignees whatſoever, heritably and irredeemably, *all* and *whole* (inſert the lands), lying within the pariſh of —— and ſheriffdom of ——: *And whereas* the ſaid A. B. by diſpoſition dated the —— day of —— (for the cauſes therein ſpecified), *ſold*, *alienated*, and *diſponed*, to and in favour of me the ſaid C. D. in liferent, during all the days of my life, *all* and *whole* the foreſaid lands and others above ſpecified, lying and deſcribed as aforeſaid: Which diſpoſition ſpecially contains an aſſignation to the charter of reſignation before recited, with the precept of ſeiſine therein contained, in ſo far as concerns the lands and others before ſpecified, diſponed to me in liferent; with power to me to obtain myſelf infeft, in the terms above mentioned, in the lands and others foreſaid, *omni habili modo*. Upon which charter and precept of ſeiſine, and aſſignation thereto, I was, upon the —— day

day of ——, duly and lawfully infeft and ſeiſed in the ſaid lands of ——, and pertinents thereof, conform to inſtrument of ſeiſine under the hands of —— notary-public, regiſtered in the general regiſter of ſeiſines, reverſions, &c. kept at Edinburgh the —— day of ——. *And now ſeeing* the ſaid A. B. has made payment to me of a certain ſum of money, in conſideration of my renouncing my liferent of the ſaid lands, which I am willing to do in manner under-written: *Therefore* wit ye me to have *renounced* and *diſcharged*, as I hereby *renounce*, *diſcharge*, *quit-claim*, *upgive* and *overgive*, to and in favour of the ſaid A. B. his heirs and ſucceſſors, my ſaid liferent-right of the foreſaid lands of ——, together with the ſaid diſpoſition and infeftment in my favours, and all right competent to me in virtue of the ſame. *And* I hereby *confeſs* and *declare* the ſaid lands, with the pertinents thereof, to be fixed, freed, and diſburdened thereof, from and ſince the term of ——, and in time coming. *Which* renunciation and diſcharge, I bind and oblige me to warrant to the ſaid A. B. and his

Subſumption.

Renouncing and diſcharging clauſes.

Warrandice.

his foreſaids, from my own fact and deed allenarly, done or to be done in prejudice hereof: *And having* herewith delivered up to the ſaid A. B. the ſaid diſpoſition and infeftment, *I conſent* to the regiſtration hereof in the books of council and ſeſſion, general or particular regiſter of ſeiſines, reverſions, &c. or others competent, therein to remain for preſervation and publication; and, if need be, that all execution neceſſary paſs hereon, in form as effeirs; and thereto conſtitute my procurators. *In witneſs*, &c.

Delivery of the writings. Regiſtration.

Subſcription clauſe.

A wadſet is thus extinguiſhed: If the wadſet is held of the reverſer by a diſcharge and renunciation, in which it is uſual to inſert a procuratory of reſignation *ad remanentiam*, and to reſign in the reverſer's hands, and regiſter the inſtrument thereupon, together with the diſcharge and renunciation in the regiſter of ſeiſines, which, without any new infeftment, extinguiſhes the wadſet, and conſolidates the property with the ſuperiority. But a ſimple renunciation, properly regiſtered, has the ſame effect, even without reſignation, becauſe the reverſer, who is ſuperior, continues

Obſervations on extinction of wadſets.

continues infeft in the lands, notwithſtanding the wadſet with which his right is burdened, and conſequently, as ſoon as his ſeiſine is diſcharged of the burden by the wadſetters regiſtered renunciation, he muſt of courſe be reinſtated in the full right of the lands. *Hop. Min. Pr.* § 170.—If a wadſet is held of the reverſer's ſuperior, it has been laid down, that a diſpoſition, reciting the wadſet, and that the wadſet money had been paid, with procuratory and precept, is the proper method of reinſtating the reverſer, who, being infeft thereon, completes his right. The reaſon given for which is, that in a wadſet holden of the reverſer's ſuperior, the reverſer is, by the ſeiſine proceeding upon it, diveſted of all right in the lands; and therefore the ſuperior, to whom the reverſer is, after that period, no better than a ſtranger, lay under no obligation, as the law formerly ſtood, to receive him again as vaſſal, tho' the wadſetters ſhould have been willing to renounce or diſpone in his favour: That, for obviating this inconveniency, letters of regreſs were formerly granted by the ſuperior, by which he became obliged to give the

the reverſer his former vaſſal full regreſs to his property upon his redeeming the lands: That the neceſſity of theſe letters is now in a great meaſure ſuperſeded by 20th Geo. II. c. 50. obliging ſuperiors to receive every one as vaſſal who ſhall produce a grant by the former vaſſal, containing procuratory of reſignation, upon payment of the compoſition due by long cuſtom: That the only benefit, therefore, that can accrue to the reverſer by letters of regreſs is, that the ſuperior muſt, in that caſe, receive him without any compoſition. The doctrine above ſtated is ſomewhat liable to diſpute. If what is ſtated in *Hope's Minor Practics* is to be conſidered as of any weight, in wadſets held of the granter, there appears little reaſon for making any diſtinction on account of the manner in which they are held; except that, if a procuratory of reſignation is neceſſary, it muſt be *in favorem* in the one caſe, and *ad remanentiam* in the other; for, if reſignation is neceſſary in one caſe, it ſeems to be equally ſo in the other. The reaſon given in *Hope's Minor Practics*, 'becauſe the 'the reverſer, who is ſuperior, continues 'infeft

'infeft in the lands, notwithſtanding the 'wadſet with which his right is burdened, 'and conſequently as ſoon as his ſeiſine is 'diſcharged of the burden by the wadſet-'ter's regiſtered renunciation, he muſt of 'courſe be reinſtated in the full right of 'the lands,' ſeems not ſufficient to found a diſtinction between the different manners of holding; for now that the method of ſplitting and conſolidating properties and ſuperiorities is arrived at conſiderable perfection, it is not found that the vaſſal's reconveyance to the ſuperior of itſelf conſolidates the property and ſuperiority; there muſt be a reſignation *ad remanentiam*; and then, and not till then, the ſuperior's ſeiſine revives. A wadſet held of the reverſer is a wadſet of the property, and if conſidered as an abſolute right, *cum pacto de retrovendendo*, muſt, without doubt, require reſignation *ad remanentiam*. The reaſon given, therefore, rather leads to a concluſion, that a wadſet of any kind, being only a burden upon the lands, as ſoon as the ſame is diſcharged, the reverſer's ſeiſine, or his charter, if held of the crown, as in liferents, muſt revive, and he muſt be

reinſtated in his right to the lands, whether held of the reverſer or his ſuperior. It has been made a queſtion before the Court of Seſſion, whether any thing more than a ſimple renunciation was neceſſary, when held of the granter's ſuperior, though it did not come the length of a deciſion; it is clearly therefore a point doubtful. The ſcope of the doctrine laid down by Mr *Wight* ſeems to be, that a renunciation, containing procuratory of reſignation, upon the ſtricteſt feudal principles, is all that is neceſſary; and he concludes, that it will probably, in a ſhort time, be conſidered that a ſimple renunciation is all that is neceſſary: Indeed, no more than a diſcharge and renunciation, containing a procuratory of reſignation *in favorem*, is in practice uſed. The reaſon given for the neceſſity of a re-diſpoſition appears to have been taken, not from the original form of wadſets, by charters, which bore only to be an impignoration, and contained the reverſion *in gremio*, but from the corrupt practice of abſolute diſpoſitions, and letters of reverſion apart. It is, however, to be obſerved, that ſince theſe letters were appointed

pointed to be regiſtered, we have in effect returned to the firſt method of executing them; for, when they are even executed by contract, the counterpart, with regard to the reverſion, is no more than an aſſent to the clauſe of reverſion in the firſt part of the contract, or an echo of that clauſe; and, when they are executed by diſpoſition, or diſpoſition and aſſignation, they are preciſely on the ſame principle as thoſe granted by charter were: In which caſe a rediſpoſition would have been an abſurdity; neither does there appear to have been any occaſion for a reſignation, or for any thing elſe but a ſimple diſcharge to vouch the payment, at the term of redemption; or a renunciation and diſcharge, if granted before that period; ſo that, in any event, a diſcharge and renunciation ſeems to be ſufficient. As a diſcharge and renunciation, containing procuratory of reſignation, is in practice uſed, I have, in the following example, followed that method of extinction of a wadſet, held of the reverſer's ſuperior.

Diſcharge

Diſcharge and renunciation of a wadſet.

Diſcharge and Renunciation of a Wadſet.

Granter.

Narrative.

I, D. E. of F. conſidering that C. D. ——, by his diſpoſition dated the —— day of —— 176— years, in conſideration of the ſum of five pounds Sterling money, with the lawful intereſt thereof from the term of Whitſunday then laſt, paid by me to him, *alienated*, *aſſigned*, and *diſponed*, to and in favour of me, my heirs or aſſignees whomſoever, heritably, but under reverſion, in manner therein mentioned, *all* and *whole* the forty-ſhilling land of old extent of C. (deſcribe the lands), lying within the barony of —— and ſheriffdom of ——; *but redeemable* always, and under reverſion, the ſaid lands and others foreſaid, from me and my foreſaids, by A. B. of C. and his heirs or diſponees, by payment or conſignation of the ſaid ſum of five pounds Sterling, at the terms, and in manner mentioned in the clauſe of reverſion contained in

in the ſaid diſpoſition, which is ordained to be inſert in the infeftments to follow upon ſaid diſpoſition: *And* the ſaid C. D. thereby *aſſigned* and *made over* to and in favour of me, and my foreſaids, *not only* the whole feu-duties, blench duties, and others payable furth of the ſaid lands by the vaſſals therein, for the crop and year 176—, both terms thereof, and for all other years and terms thereafter during the not redemption; *but alſo* the whole writs, evidents, title-deeds, and ſecurities, both old and new, of and concerning the ſaid lands and others; *and particularly*, without prejudice to the ſaid generality, a contract of wadſet thereof entered into between the ſaid A. B. of C. on the one part, and the ſaid C. D. on the other part, dated the —— and —— days of ———, with the clauſe of abſolute warrandice therein contained, under the exception therein mentioned, and other clauſes thereof, and a charter of reſignation of the ſaid lands and others under the great ſeal in his favour, dated the —— day of ———, ſealed the —— day of ———, proceeding upon the procuratory of reſignation contained in the

ſaid

ſaid contract, ſo far as the ſaid charter concerned the ſaid lands and others above mentioned, and no further, in manner more fully mentioned in the ſaid diſpoſition: And that by virtue of the ſaid precept of ſeiſine, contained in the foreſaid charter, and before mentioned aſſignation thereof, I was duly infeft and ſeiſed in the foreſaid lands and others, conform to my inſtrument of ſeiſine, dated the ——, and regiſtered in the particular regiſter of ſeiſines kept for the ſhire of ——, the — day of —— 176— years. *And now ſeeing* the ſaid A. B. has made payment to me of the ſaid ſum of five pounds Sterling, whereof I hereby acknowledge the receipt and diſcharge him thereof: *Therefore*, I hereby *grant* and *declare* the ſaid forty-ſhilling land of old extent of C. with the fiſhings and whole pertinents of the ſaid lands, lying and deſcribed as aforeſaid, to be duly and lawfully redeemed from me: *And* I accordingly *renounce* and *overgive* the ſame, diſpoſition thereof, and infeftment following thereon, to and in favour of the ſaid A. B. his heirs and diſponees, in all time hereafter. *And to the end* the ſaid A.

Subſumption.

Grant of redemption,

and renunciation.

A. B. may be completely veſted and ſeiſed in the foreſaid lands and others, I hereby *make*, *conſtitute*, and *appoint*,

Procuratory of reſignation *in favorem.*

and each of them, jointly and ſeverally, my very lawful and irrevocable procurators and attornies, with full power and commiſſion, for me, and in my name and behalf, duly and lawfully to *reſign*, *ſurrender*, and *overgive*, as I hereby *reſign*, *ſurrender*, and *overgive*, *all* and *whole* the ſaid forty ſhilling-land of old extent of ——, with the fiſhings, and yairs, and cruives, as well of ſalmon as of other white fiſhes, and both in ſalt and freſh waters, belonging to the ſaid lands; with all and ſundry parts and pertinents of the ſaid lands whatſoever, lying and deſcribed as aforeſaid, and here held as repeated *brevitatis cauſa*; *in the hands* of my immediate lawful ſuperiors of the ſame; *in favour*, and for new infeftment thereof, to be made and granted to the ſaid A. B. and his heirs and aſſignees, in due and competent form, and thereupon to take inſtruments; and generally to do every other thing thereanent, which to the office of procuratory in ſuch caſes belongs: *Ratifying*

tifying hereby, and holding firm whatever my ſaid procurators ſhall lawfully do, or cauſe to be done, in the premiſſes. *And I bind* and *oblige* me to warrant this renunciation from all facts and deeds done or to be done in prejudice hereof; *and* I have herewith delivered up the foreſaid diſpoſition and infeftment: *And* I conſent to the regiſtration hereof, in the general or particular regiſter of ſeiſines, reverſions, &c. (*Subſcription clauſe.*)

Warrandice.

Delivery of the writs.

Regiſtration.

Diſcharge and renunciation of a right of reverſion.

Diſcharge and Renunciation of a Right of Reverſion.

Premiſſes.

Granter.

Narrative.

Be it known to all men by theſe preſents, me, A. B. of C. in whoſe favour the right of reverſion after mentioned is conceived, *whereas* by contract of wadſet entered into between me on the one part, and C. D. —— in E. on the other part, dated ——, *I ſold*, *alienated*, and *diſponed*, from me, my heirs, and ſucceſſors, heritably to the ſaid

ſaid C. D. *all* and *whole* the lands of —— (deſcribe them); *and* I *bound* and *obliged* me to infeft and ſeiſe the ſaid C. D. and his foreſaids, therein to be holden in manner, and with the warrandice therein mentioned; *but redeemable* always, and under the reverſion therein contained, to me and my heirs, upon payment of the ſum of —— Sterling, to be paid by me and my heirs to the ſaid C. D. and his foreſaids, or otherwiſe to be conſigned for their behoof, in manner, at the time and place, and upon the premonition therein expreſſed, as the ſaid contract of date foreſaid, with the infeftment following thereon, dated ——, regiſtered ——, at more length bear. *And now ſeeing* the ſaid C. D. has inſtantly made payment to me of a certain ſum of money, in conſideration of my granting theſe preſents, whereof I acknowledge the receipt: *Therefore*, I hereby *renounce*, *diſcharge*, *quit-claim*, and *ſimpliciter overgive*, from me, my heirs and ſucceſſors, to and in favours of the ſaid C. D. the foreſaid contract, in ſo far as the ſame concerns, or may be extended to the foreſaid reverſion competent to us for redeeming

Subſumption.

Renouncing and diſcharging clauſes.

the ſaid lands; *and* I hereby *declare* th ſaid right of reverſion to be now, and i all time coming, void, null, and of no a vail, force, ſtrength, or effect, in the ſam manner as if ſuch reverſion had never bee granted or conceived, in favour of me, o my foreſaids, and that the ſaid lands ma remain and abide with the ſaid C. D. an be enjoyed and poſſeſſed by him, heritabl and irredeemably, in time coming for ever

Delivery of the writs.

and I have herewith delivered up to th ſaid C. D. the whole writs and evidents old and new, of and concerning the ſai lands, to be kept and uſed by him, and hi foreſaids, as their own proper evidents i time coming. (*Clauſe of regiſtration* in th regiſter of ſeiſines, reverſions, &c. an ſubſcription clauſe.)

Regiſtration.

Renunciations of wadſets, and of rever- ſions, muſt be regiſtered in 60 days after their dates, by act 1617, c. 16.

Obſervation on extinction of heritable ſecurities acceſſory to perſonal obligations.

Bonds and diſpoſitions under reverſion, and rights in ſecurity, granted as acceſſory to a perſonal obligation, which are extinguiſhable by payment or intromiſſion, do not require formal renunciations; any diſcharge of the perſonal obligation will ex-

tinguiſh

tinguiſh them; and it is not even neceſſary to be inſert in the regiſter of ſeiſines and reverſions, much leſs is there any occaſion for a procuratory of reſignation; although in practice, when held of the granter, it was very common, not many years ago, to inſert a procuratory of reſignation *ad remanentiam.* From the following diſcharge and renunciation of a bond and diſpoſition under reverſion, any deed for extinguiſhing theſe rights acceſſory to a perſonal obligation may be formed.

Diſcharge and Renunciation of a Bond and Diſpoſition under Reverſion.

Diſcharge and renunciation of a bond and diſpoſition under reverſion.

Know all men by theſe preſents, me C. D. —— in E. *whereas* A. B. of C. by bond and diſpoſition, dated the —— day of ——— (for the cauſes therein ſpecified), bound and obliged himſelf, his heirs and ſucceſſors, to have paid to me, my heirs or aſſignees, the ſum of ——— Sterling, againſt

Premiſſes.
Granter.
Receiver.
Narrative.

gainſt the term of Martinmas then next, with one fifth part more of the ſaid principal ſum, of penalty, in caſe of failure; and the due and ordinary intereſt of the ſaid principal ſum, from the date of the ſaid bond to the ſaid term of payment, and thereafter yearly, termly, and proportionally, during the not payment of the ſame: And for my real ſecurity thereanent, and without hurt or prejudice to the foreſaid perſonal obligation, the ſaid A. B. *diſponed, conveyed,* and *made over,* to me, and my foreſaids, heritably but under reverſion, *all* and *whole* (inſert the lands), together with all right, title, and intereſt, competent to him, his authors, and predeceſſors therein; *but redeemable* always by the ſaid A. B. and his foreſaids, from me, and my foreſaids, at the aforeſaid term of payment, or at any other ſubſequent term of Whitſunday, Lammas, Martinmas, or Candlemas, by payment making to me of the foreſaid principal ſum, intereſt that might be due at the time, penalty if incurred, or ſo much thereof as might be laid out in doing diligence on the ſaid bond and diſpoſition, and expence of taking infeftment; and obliged himſelf

to

to infeft and ſeiſe me, and my foreſaids, heritably, but under reverſion in manner foreſaid, in *all* and *whole* the foreſaid lands and others, by two ſeveral infeftments and manners of holding; as the ſaid bond and diſpoſition, which contains a procuratory of reſignation, precept of ſeiſine, and ſundry other clauſes, in itſelf more fully bears: *Upon* which bond and diſpoſition, and the foreſaid precept of ſeiſine, I was, upon the —— day of ———, duly and lawfully infeft and ſeiſed in the ſaid lands of —— and pertinents, conform to an inſtrument of ſeiſine under the hand of ——— notary-public, which is regiſtered in the general regiſter of ſeiſines, reverſions, &c. kept at Edinburgh, upon the —— day of ——. *And now ſeeing* that the ſaid A. B. has made payment to me of the foreſaid principal ſum of —— Sterling, with the whole bygone intereſt thereof, and the expence of the ſaid infeftment, whereof I grant the receipt, renouncing all objections to the contrary: *Therefore* wit ye me, *not only* to have *exonered* and *diſcharged*, as I by theſe preſents *exoner*, *quit-claim*, and *ſimpliciter diſcharge*, the ſaid A. B. his heirs, executors, and

Subſumption.

Diſcharging

tors, and ſucceſſors, of the foreſaid ſum of —— Sterling, whole bygone intereſt thereof, penalty and expences of infeftment before mentioned; *but alſo* of the foreſaid bond and diſpoſition, and infeftment thereon themſelves, and of all action, diligence, and execution, competent to me thereupon; which I hereby *renounce*, *upgive*, and *overgive*, in favour of the ſaid A. B. and his foreſaids: *And* I do hereby *confeſs* and *declare* the forſaid lands of —— and pertinents thereof, to be free, quit, and looſed, of and from the foreſaid infeſtment, now, and in all time coming: *Which* diſcharge and renunciation, I oblige myſelf to be good, valid, and ſufficient, to the ſaid A. B. and his foreſaids, at all hands, and againſt all deadly, as law will. *And* having herewith delivered up to him the foreſaid bond and diſpoſition, and inſtrument of ſeiſine, to be kept and uſed by him, and his foreſaids, at pleaſure, *I conſent* to the regiſtration hereof in the books of council and ſeſſion, general or particular regiſter of ſeiſines, reverſions, &c. or others competent, therein to remain for preſervation and publication;

renouncing clauſes, and grant of redemption.

Warrandice.

Delivery of the writs.

Regiſtration.

tion; and, if need be, that all execution neceſſary, in form as effeirs, paſs hereon; and thereto conſtitute

my procurators. *In witneſs*, &c. (Subſcription clauſe.)

Subſcription clauſe.

FINIS.

A C T I X

APPENDIX.

Poſt-Nuptial Contract of Marriage, where a ſum is provided to the Wife in liferent, and the Children in fee, and taken payable to a Truſtee for the ſaid Children during their non-exiſtence; the tocher not affectable by the Huſband's Creditors, and containing ſeveral other ſpecialities.

Poſtnuptial contract of marriage.

IT *is contracted, agreed,* and *matrimonially concluded* and *ended,* betwixt F. G. H. of —— *on the one part,* and E. B. now G. H. his ſpouſe, lawful daughter of A. B. Eſq; of C. with conſent of her ſaid huſband and father, and the ſaids F. G. H. and A. B. for themſelves, and as taking burden on them for her, *on the other part,* as follows; *that is to ſay, whereas* the ſaid F. G. H. and E. G. H. are already married, yet there having been no contract of marriage entered into by them, the ſaid

Premiſſes.

Parties.

Recital.

1ſt part. Proviſion to the wife in liferent, and children in fee.

E. G. H. is not properly ſettled in any jointure, nor are the children, that may happen to be procreated, provided according to the agreement of parties, before and at the time of the marriage: *Therefore, in contemplation* of the ſaid marriage, and for the portion after mentioned, given by the ſaid A. B. with his ſaid daughter, the ſaid F. G. H. binds and obliges him, his heirs, as well male, of tailzie, conqueſt and proviſion, as heirs general and of line, (renouncing the benefit of the order of diſcuſſing them), and ſucceſſors whatſoever, to make payment to the ſaid E. G. H. in liferent, for her liferent uſe allenarly, in caſe ſhe ſhall ſurvive him, and to the children to be procreated of the marriage betwixt them in fee; and, during the non-exiſtence of the ſaid children, to the ſaid A. B. and his heirs in fee, *but in truſt* for their uſe and behoof, of the ſum of 40,000 merks Scots money, at the firſt term of Whitſunday or Martinmas after the deceaſe of the ſaid F. G. H. with 8,000 merks money foreſaid, of liquidate penalty and expences, in caſe of failure, together with the due and ordinary annualrent of the

the ſaid principal ſum, at two terms in the year, Whitſunday and Martinmas, by equal portions, beginning the firſt term's payment thereof at the firſt term of Whitſunday or Martinmas next after his ſaid deceaſe, with annualrent from the time of his deceaſe to the ſaid term of payment, and ſo forth termly thereafter during the not-payment of the ſaid principal ſum, with 200 merks Scots money of liquidate penalty for each term's failure *toties quoties*. *And* for the ſaid E. G. H. and the children of the ſaid marriage, their greater ſecurity, and more certain payment of the ſums of money above ſpecified, the ſaid F. G. H. binds and obliges him, and his foreſaids, upon their own proper charges and expences, to infeft and ſeiſe the ſaid E. G. H. in liferent, and the children of the ſaid marriage; and during the non-exiſtence of the ſaid children, the ſaid A. B. and his foreſaids in fee, but in truſt for their uſe and behoof, *not only* in *all* and *whole* an annualrent of 2000 merks Scots money, or any other annualrent, leſs or more, correſponding to the ſaid principal ſum of 40,000 merks money foreſaid, by the laws

Obligation to infeft.

for

for the time, yearly to be uplifted and taken at the ſaid two terms in the year, by equal portions, *furth* of *all* and *whole* (inſert the lands), or furth of any part or portion thereof, readieſt rents, maills, farms, profits, and duties of the ſame; *but alſo* to infeft and ſeiſe the ſaid E. G. H. in liferent, and the children of the ſaid marriage in fee; and, during the non-exiſtence of the ſaid children, the ſaid A. B. and his foreſaids in fee, but in truſt for their own uſe and behoof; *in all* and *whole* the ſaid lands, baronies, mills, mill-lands, teinds, parſonage and vicarage, and others, with the pertinents above written, lying as aforeſaid, and all here holden as repeated *brevitatis cauſa*; *in ſecurity* to the ſaid E. G. H. in liferent, and the ſaid children of the marriage betwixt her and the ſaid F. G. H. in fee, and during the not-exiſtence of the ſaid children, to the ſaid A. B. and his foreſaids in fee, but in truſt for their uſe and behoof of the ſaid ſum of 40,000 merks, Scots money, annualrents thereof hereby provided to them, and of the liquidate expences, and termly failzies above mentioned, that ſhall happen to be incurred;

red; *to be holden* in manner under-written, viz. the ſaid annualrent to be holden by two ſeveral infeftments and manners of holding, the one thereof to be holden of the ſaid F. G. H. and his foreſaids, and the other from them of their immediate lawful ſuperiors, either by reſignation or confirmation; and both in free blench, for payment of a penny Scots money yearly upon the ground of the ſaid lands, at the term of Whitſunday, in name of blench farm, if aſked allenarly: And the ſaid lands, baronies, mills, mill-lands, teinds, parſonage and vicarage, and others foreſaid, with the pertinents above written, lying as ſaid is, and here held as repeated *brevitatis cauſa*; to be holden by two ſeveral infeftments and manners of holding, the one thereof to be holden of the ſaid F. G. H. and his foreſaids, in free blench farm, and the other of the ſaid infeftments to be holden from them, of their immediate lawful ſuperiors, ſicklike and as freely, in all reſpects, as the ſaid F. G. H. holds, or might hold the ſaid lands himſelf; and that either by reſignation or confirmation, the one without prejudice of the other: Tenendas.

And

Procuratory of resignation.

And for effectuating the said infeftment by resignation, the said F. G. H. hereby *makes*, *constitutes*, and *ordains*,

and each of them, conjunctly and severally, his lawful and irrevocable procurators and attornies, with full power to them to compear before his immediate lawful superiors or their commissioners in their names, having power and authority to receive resignations, and thereupon to grant new infeftments, at any time and place lawful and convenient, and then and there, with all due humility and reverence as becomes, purely and simply by staff and bastion, as use is, to *resign*, *surrender*, *upgive*, *overgive*, and *deliver*, *likeas* the said F. G. H. by these presents, *resigns*, *surrenders*, *upgives*, *overgives*, and *delivers*, *not only all* and *whole* the foresaid annualrent of 2000 merks Scots money, or any annualrent, less or more, corresponding to the said principal sum of 40,000 merks money foresaid, yearly to be uplifted and taken, at the said two terms in the year, Whitsunday and Martinmas, by equal portions, *furth* of *all* and *whole* the said lands, baronies, mills, mill-lands, teinds, parsonage

and

and vicarage, and others, with the pertinents above written, lying as ſaid is, *or furth* of any part or portion thereof, readieſt rents, mails, farms, profits, and duties of the ſaid lands; *but alſo all* and *whole* the ſaid lands, baronies, mills, mill-lands, teinds, and others, with the pertinents above written, lying as aforeſaid, *in real ſecurity* to the ſaid E. G. H. in liferent, and to the ſaid children to be procreated of the marriage betwixt her and the ſaid F. G. H. and during the non-exiſtence of the ſaid children, to the ſaid A. B. and his foreſaids in fee, but in truſt for their uſe and behoof, the ſum of 40,000 merks Scots money of principal and annualrents thereof, and liquidate expences and termly failzies that ſhall happen to be incurred; *in the hands* of the ſaid F. G. H. his immediate lawful ſuperiors, or their commiſſioners, in their names, *in favour*, and for new infeftments of the ſaid annualrent, and lands above written, to be made and granted to the ſaid E. G. H. in liferent, for her liferent uſe allenarly, in caſe ſhe ſhall ſurvive the ſaid F. G. H. her huſband, and to the children to be procreated of the ſaid marriage betwixt them in fee;

fee; and during the non-exiſtence of the ſaid children, to the ſaid A. B. and his foreſaids in fee, but in truſt for their uſe and behoof, heritably, but under reverſion in manner under written; *declaring*, as it is hereby expreſsly *provided* and *declared*, that the ſaid annualrent, and lands, baronies, and others above written, ſhall always be redeemable by the ſaid F. G. H. and his foreſaids, from the ſaid E. G. H. his ſpouſe, and their ſaid children and truſtee, by payment making to them of the ſaid principal ſum of 40,000 merks Scots money, with the annualrents thereof that ſhall be reſting at the time, and liquidate expences and termly failzies that ſhall happen to be incurred; and that either at the ſaid term of payment, or any other term thereafter they pleaſe, upon the premonition always of 40 days, in common form of reverſions, or by conſignation of the ſame, in caſe of refuſal, in the hands of the provoſt, or any one of the bailies of Edinburgh, moſt reſponſible for the time, to be made forthcoming to the ſaid E. G. H. and the children of the ſaid marriage, or their ſaid truſtee, upon the peril of the conſigner, and the place of conſig-

Clauſe of redemption.

conſignation to be within the parliament-houſe of Edinburgh, at that place thereof where the commiſſioners uſually ſit to adminiſter juſtice; and that theſe preſents, with the principal ſeiſine to follow hereon, or any extract thereof, ſhall be as ſufficient for redeeming the ſaid annualrent, and lands, and others above written, in ſecurity as aforeſaid, as if there was a particular letter of reverſion granted for that effect: *Acts*, *inſtruments*, and *documents*, one or more, as many as needful in the premiſſes, to aſk, take, and raiſe, and generally, every other thing thereanent to do, uſe, and exerce, which the ſaid F. G. H. might do therein himſelf, if perſonally preſent; *promiſing* to hold firm and ſtable whatever his ſaid procurator ſhall lawfully do, or cauſe to be done, in the premiſſes, without revocation. *Which* annualrent, lands, baronies, and others, in ſecurity as aforeſaid, the ſaid F. G. H. binds and obliges him, and his foreſaids, to warrant, acquit, and defend, to be good, valid, and ſufficient, free, ſafe, and ſure, to the ſaid E. G. H. his ſpouſe in liferent, and their ſaid children in fee, from all and ſundry perils, Warrandice.

burdens, dangers, incumbrances, and inconveniences whatſoever, at all hands, and againſt all deadly, as law will. *And further*, the ſaid F. G. H. hereby *aſſigns* and *diſpones* to the ſaid E. G. H. his ſpouſe, and to the ſaid children, and during their non-exiſtence to the ſaid A. B. and his foreſaids, as truſtees for the ſaid children, as much of the firſt, beſt, and readieſt of the mailles, farms, profits, and duties of the ſaid lands, baronies, and others, that will be due at the ſaid term of Whitſunday or Martinmas next, after the deceaſe of the ſaid F. G. H. and thereafter, as will completely ſatisfy and pay the foreſaid principal ſum, annualrents thereof that ſhall be due at the time, with the liquidate expences and termly failures that ſhall happen to be incurred; with power to them to uplift and receive the ſaid rents, profits, and duties, and to do all manner of legal diligence for recovering thereof. *As alſo*, the ſaid F. G. H. hereby *aſſigns* and *diſpones* to the ſaid E. G. H. his ſpouſe, in caſe ſhe ſhall ſurvive him, the juſt and equal half of the houſehold-furniture, including ſilver-plate and heirſhip-moveables,

Aſſignation to the rents.

Aſſignation to part of the houſehold-furniture.

ables, which ſhall pertain and belong to him at the time of his death; but with this expreſs condition, that it ſhall be lawful to the heir ſucceeding to the ſaid F. G. H. in his honours, to redeem the ſaid houſehold-furniture from the ſaid E. G. H. by payment making to her of the ſum of L. 200 Sterling, at the firſt term of Whitſunday or Martinmas next, after the deceaſe of the ſaid F. G. H. her huſband.

Power to the heir to redeem the ſame.

And in like manner, the ſaid F. G. H. *binds* and *obliges* him, and his foreſaids, to ſettle and provide the juſt and equal fourth part of the whole lands, heritages, and other ſubjects, both heritable and moveable, which he ſhall happen to conqueſt and acquire during this preſent marriage, to the ſaid E. F. G. in liferent, for her liferent uſe allenarly, in caſe ſhe ſurvive him; *as alſo* to ſettle and provide the juſt and equal half of the whole lands, heritages, and other ſubjects, both heritable and moveable, which he ſhall happen to conqueſt and acquire during the ſaid marriage, to the children thereof to be procreate betwixt him and the ſaid E. G. H. his ſpouſe, the ſaid

Proviſion of a certain part of the conqueſt to the wife.

Proviſion of a part thereof to the children.

ſaid half of the conqueſt being always burdened with the liferent of the fourth part of the whole conqueſt to the ſaid E. G. H. above written. *And laſtly*, the ſaid F. G. H. *binds* and *obliges* him, and his foreſaids, to aliment, entertain, and educate the children of the ſaid marriage, in all things ſuitable to their rank and quality, during his lifetime, and until the ſaid proviſions above mentioned ſhall become due and payable. *Which* proviſions above written, conceived in favours of the ſaid E. G. H. ſhe, with conſent foreſaid, accepts of, in full ſatisfaction to her, of all ſhe can any ways aſk or claim by law, through the deceaſe of the ſaid F. G. H. her huſband, in caſe ſhe ſhall happen to ſurvive him, or which her executors, or neareſt of kin, can aſk or claim by her deceaſe, in caſe ſhe ſhall happen to die before him, except what further the ſaid F. G. H. ſhall pleaſe to leave and bequeath to her of his own good will only: As alſo excepting her *paraphernalia*, which it ſhall be lawful for her to diſpoſe of, by any writing under her hand; and for that effect, and failing thereof, the ſaid

Obligation to aliment the children till their proviſions become payable.

Acceptance thereof in full of all claim of legal proviſions.

Exception of *paraphernalia*.

ſaid *paraphernalia* ſhall not fall to her executors, but ſhall belong to the ſaid F. G. H. and which proviſions to the ſaid children are hereby declared to be in full ſatisfaction to them, of all legitim, portion-natural, bairns part of gear, or whatever elſe they can aſk or claim by the deceaſe of the ſaid F. G. H. their father, except what further he ſhall pleaſe to leave and bequeath to them of his own good will only. *For which cauſes*, and *on the other part*, the ſaid A. B. binds and obliges him, his heirs, executors, and ſucceſſors whatſoever, to make payment to the ſaid F. G. H. and E. G. H. in conjunct fee and liferent, for their liferent-uſe only, and to the children to be procreated of the marriage betwixt them in fee; and, during the non-exiſtence of the ſaid children, to the ſaid F. G. H. in fee, but in truſt for their uſe and behoof; and, failing children of the ſaid marriage, to the ſaid F. G. H. in fee, his heirs and aſſignees, (ſecluding his executors, both as to principal and annualrents), *all* and *whole* the ſum of L. 4000 Sterling, at the firſt term of Whitſunday

Counterpart. Obligation by the wife's father to pay a certain ſum to the huſband and wife in conjunct fee and liferent, and to the children in fee.

ſunday or Martinmas next after the ſaid A. B. his deceaſe, with L. 800 money foreſaid, of liquidate expences, in caſe of failure; together with the due and ordinary annualrent of the ſaid principal ſum from the —— day of —— laſt, being the date of the ſaid marriage, to the ſaid term of payment, and yearly, termly, and proportionally thereafter, during the not-payment of the ſaid principal ſum; *and* that always with and under this expreſs proviſion, *that*, *in regard* the fee of the ſaid ſum of L. 4000 Sterling, during the ſtanding of this marriage, betwixt the ſaid F. G. H. and E. G. H. and while there is a poſſibility of children thereof betwixt them, is veſted in the ſaid F. G. H. only in truſt for behoof of the ſaid children: *Therefore*, it is expreſsly *provided* and *declared*, that the ſaid ſum of L. 4000 Sterling ſhall not be ſubject to any debts or deeds of the ſaid F. G. H. or affectable by his creditors, upon any account or occaſion whatever; *providing* always, as it is hereby expreſsly *provided* and *declared*, that albeit the ſaid principal ſum of L. 4000 is only payable at the firſt term of Whitſunday

Proviſion that the ſame ſhall not be ſubject to the debts of the huſband.

Proviſion that it ſhall be lawful to pay the ſame before the term of payment;

day or Martinmas next after the deceaſe of the ſaid A. B. *Yet, nevertheleſs*, it is and ſhall be lawful to the ſaid A. B. to make payment thereof at the term of Whitſunday next, or at any other term of Whitſunday or Martinmas thereafter, without any premonition to be uſed for that effect; *declaring* that it ſhall be lawful to the ſaid F. G. H. by himſelf alone, to accept payment of the ſaid principal ſum, and to diſcharge the ſame, without the conſent or concurrence of his ſaid ſpouſe; *but with* this expreſs proviſion, that, whenever payment ſhall be made of the ſaid principal ſum, the ſaid F. G. H. ſhall be bound and obliged, as he hereby binds and obliges himſelf, and his foreſaids, to re-employ the ſame, and to take the rights and ſecurities thereof to himſelf, and the ſaid E. G. H. in conjunct fee and liferent, for their liferent-uſe only, and the children of the ſaid marriage betwixt them in fee; and, during the non-exiſtence of the ſaid children, to the ſaid F. G. H. in fee, but in truſt for their uſe and behoof; *and*, failing children of the ſaid marriage, to the ſaid F. G. H. in fee, his heirs and aſſignees

and that it ſhall be lawful to the huſband to receive and diſcharge it.

Obligation to re-employ it.

nees, whatſoever, (ſecluding his executors, both as to the principal and annualrents), at the ſight of the ſaid A. B. his heir or repreſentative: *And*, how often it ſhall happen the ſaid F. G. H. to uplift the ſaid principal ſum, he obliges him, and his foreſaids, as often to re-employ the ſame, and to take the rights and ſecurities thereof in manner foreſaid. *Which* ſum of L. 4000 Sterling, given by the ſaid A. B. in name of tocher with the ſaid E. G. H. his daughter, ſhe, with conſent of the ſaid F. G. H. her ſaid huſband, and they both with one conſent, and he as taking burden on him for her, accept in full ſatisfaction of all ſhe can any manner of way aſk or claim by law, through the deceaſe of the ſaid A. B. her father, except what further he ſhall pleaſe to leave and bequeath to her of his own good will only. *And* it is hereby expreſsly *provided* and *declared*, that, in caſe the ſaid E. G. H. ſhall happen to ſurvive the ſaid F. G. H. her huſband, and that there ſhall happen to be children, one or more, of the ſaid marriage in life at the time of his deceaſe, who ſhall have no other

Acceptance thereof in full of all the wife can demand by the death of her father.

Obligation to aliment and educate the children.

other proviſion, means, or eſtate, for their aliment and education, than the ſums contained in the contract of marriage; *in that* caſe, the ſaid E. G. H. ſhall be bound and obliged, as ſhe hereby, with conſent foreſaid, *binds* and *obliges* herſelf to aliment, entertain, and educate, the ſaid child or children, in bed, board, and cloaths, and all other neceſſaries, ſuitable to their rank and quality, and proportionally to the liferent proviſion hereby conceived in her favour, during her viduity or widowhood, after the deceaſe of her ſaid huſband; and, for that end, to beſtow and employ ſo much of the intereſt of the ſecond principal ſum of money above mentioned, liferented by her in the aliment and education of her ſaid child or children, by the advice of any perſon or perſons whom it ſhall pleaſe the ſaid F. G. H. to appoint for that purpoſe, by any writing to be ſubſcribed by him; and failing thereof, by advice of the neareſt of kin on the father and mother's ſide of the ſaid children, the ſame always not exceeding the intereſt of L. 500, in caſe of one child; L. 1000, if two children; L. 1500, if three children; and not to ex-

ceed the intereſt of L. 2000, although there ſhould be four or more children. *And further*, in caſe there ſhall be one or two children of the ſaid marriage in life, at the time of the diſſolution thereof, who ſhall attain the age of 14 years complete, then, and in that caſe, the ſaid E. G. H. binds and obliges herſelf to renounce, as ſhe hereby, with conſent foreſaid, *renounces* her liferent-right of the ſum of L. 1000, of the foreſaid ſums of money liferented by her, in favours of ſuch one or two children, upon their attaining the ſaid age of 14 years; and, in like manner, if there ſhall be three who ſhall attain the ſaid age of 14 years, ſhe, with conſent foreſaid, *renounces* her liferent right of the ſum of L. 1500 in their favours; and if there ſhall be four or more children who ſhall attain the ſaid age, ſhe, with conſent foreſaid, *renounces*, in their favours, her liferent-right of the ſum of L. 2000 Sterling; *but* with this expreſs proviſion, that, in caſe there ſhall be more children than two who ſhall attain the ſaid age of 14 years, and that any of them ſhall happen to die before they ſhall attain the years of majority,

Renunciation of a part of the wife's proviſions in caſe of children,

ty, or age of 21 years complete, *in that caſe*, the ſaid E. F. G. ſhall return to her liferent-right of L. 500 Sterling of the ſums renounced by her in the event above mentioned, for each child ſo deceaſing before majority, when there ſhall be more than two children, and not above four in life at the time, at leaſt to ſo much thereof as ſhall not be expended on the education, or other neceſſary uſes of the ſaid children deceaſing as aforeſaid. *And*, in caſe it ſhall happen the ſaid E. G H. to ſurvive the ſaid F. G. H. her huſband, and to marry a ſecond huſband, there being children, one or more, of this preſent marriage in life at the time, then, and in that caſe, and from thenceforth, her ſaid liferent-right ſhall be reſtricted, as ſhe hereby, with conſent foreſaid, reſtricts the ſame to the ſum of L. 200 Sterling of annuity, free of all retention or other burdens whatſoever: And, in that caſe, the ſurplus of her ſaid liferent-right ſhall accreſce and belong to the child or children of this marriage and be payable to them, or their tutors and curators, if pupils or minors, for the time, for their uſe and behoof; *but* with

and in caſe of a ſecond huſband.

with this proviſion, that, if it ſhall happen all the ſaid children to depart this life, in that caſe, from thenceforth the ſaid E. G. H. ſhall return to the full poſſeſſion of the ſaid liferent, as fully and freely as if no ſuch reſtriction had been herein contained; with the deduction always of the liferent of ſuch ſums of money as ſhall be expended in the education, or other neceſſary uſes of the ſaid children, during their minority, or beſtowed by daughters on their huſbands as their portions. *And* it is hereby expreſsly agreed to, by all the ſaid parties, that the above proviſions to the children of this marriage ſhall be divided amongſt them, in ſuch way and manner, and by ſuch proportions, as the ſaid F. G. H. ſhall appoint, by a writing ſubſcribed by him for that effect. *Providing always*, that the whole ſums hereby provided to the ſaid children be fairly and *bona fide* given among them; and failing of any ſuch diviſion by the ſaid F. G. H. to be divided as follows, viz. if there ſhall be no ſons, but daughters only of this marriage, in that caſe the ſaid ſums of money ſhall be divided equally amongſt them; and, in

Proviſion with regard to the diviſion of the childrens proviſions.

like

like manner, if there ſhall be ſons and no daughters, the ſaid ſums ſhall be divided equally among them; but, if there ſhall be children of this marriage, both male and female, in that caſe the ſons ſhall have a fifth-part more than the daughters. *And further*, it is hereby expreſsly *provided* and *declared*, that in caſe the ſaid E. G. H. ſhall happen to ſurvive the ſaid F. G. H. her huſband, and that there be no children of this marriage exiſting at the time of the diſſolution thereof, or though there ſhall be children of this marriage exiſting at the time of the diſſolution thereof, yet, if theſe children ſhall all happen to die before their majority, or before they have actually received payment of their proviſions, *then*, and *in* either of theſe caſes, the ſaid E. G. H. ſhall have power to diſpoſe of L. 2000 of her proviſion of L. 4000, by aſſignment, will, bequeathment, or otherwiſe, *not only* in favours of a ſecond huſband, but of any other perſon ſhe ſhall think fit. *And* it is hereby mutually agreed to by the ſaid parties, that all execution competent to follow hereupon againſt the ſaid F. G. H. for implement of the proviſions conceived

Declaration that the wife ſhall, in caſe of no children at the diſſolution of the marriage by the death of the huſband, have power to aſſign a certain part of her tocher.

——at whoſe inſtance execution is to paſs.

ceived in favours of the ſaid E. G. H. and the children of this marriage, ſhall paſs and be direct at the inſtance of the ſaid A. B. during his life; and, at his death, at the inſtance of his heirs. *And, laſtly*, it is hereby *agreed* to by the ſaid parties, and ſpecially *provided* and *declared*, that this preſent contract ſhall ſtand and ſubſiſt in full force and effect, to all intents and purpoſes, although the ſaid marriage ſhall happen to be diſſolved by the deceaſe of the ſaid F. G. H. or E. G. H. within year and day of their ſaid marriage, without a living child; notwithſtanding of any law, cuſtom, or practice to the contrary: Whereanent, and with all that may be objected in the contrary, the ſaid parties expreſsly diſpenſe. *And conſenting* to the regiſtration hereof in the books of council and ſeſſion, or others competent, therein to remain for preſervation; and, if needful, that all execution neceſſary, in form as effeirs, paſs hereon, they conſtitute their procurators. *Attour*, to the effect the ſaid E. G. H. and the children to be procreate of this marriage; and, during their non-exiſtence, the

Proviſion in caſe of the marriage diſſolving within *year and day*.

Regiſtration.

Precept of ſeiſine.

the ſaid A. B. as truſtee foreſaid, may be infeft in the foreſaid annualrent of 2000 merks, Scots money, and in the ſaid lands, baronies, and others above written, in ſecurity as aforeſaid, in liferent and fee reſpectively, as ſaid is, to be holden of the ſaid F. G. H. or from him of his ſaid immediate lawful ſuperiors, by confirmation, without prejudice to the other infeftment above written, the ſaid F. G. H. hereby makes and conſtitutes

and each of you, conjunctly and ſeverally, his bailies in that part, ſpecially conſtitute, greeting; deſiring and requiring you, that this his precept of ſeiſine ſeen, ye paſs to the ground of the ſaid lands above and under-written, and there give and deliver heritable ſtate and ſeiſine, actual, real, and corporal poſſeſſion, *not only* of *all* and *whole* the foreſaid annualrent of 2000 merks, or ſuch an annualrent, leſs or more, correſponding to the ſaid principal ſum of 40,000 merks, Scots money, by law for the time, yearly to be uplifted and taken, at the ſaid two terms in the year, by equal portions; *furth* of *all* and *whole* the ſaid lands, baronies, mills,

mills, mill-lands, teinds, parſonage and vicarage, and others, with the pertinents above written, lying as ſaid is, and all here held as repeated *brevitatis cauſa*; or furth of any part or portion thereof, readieſt maills, farms, profits, and duties of the ſame: *But alſo* of *all* and *whole* the ſaid lands, baronies, mills, mill-lands, teinds, parſonage and vicarage, and others above written, with the pertinents themſelves, lying as aforeſaid, in real ſecurity to the ſaid E. G. H. in liferent, and to the children to be procreated of the marriage betwixt her and the ſaid F. G. H. in fee; and, during the non-exiſtence of the ſaid children, to the ſaid A. B. in fee; but in truſt for their uſe and behoof, of the ſaid ſum of 40,000 merks, Scots money, annualrent thereof, and liquidate expences, and termly failures that ſhall happen to be incurred, to the ſaid E. G. H. in liferent, and the ſaid children, and their ſaid truſtee in fee, or their certain attorney, or attornies, in their names, bearers hereof; and that by deliverance of earth and ſtone of the ground of the ſaid lands, a handful of graſs and corn for the ſaid teinds, clap

and

and happer for the ſaid mills, and a penny money, as uſe is, with other ſymbols, if any be, requiſite, upon the ground of the ſame, for the ſaid annualrent; and by deliverance of earth and ſtone of the ground of the ſaid lands, a handful of graſs and corn for the ſaid tiends, clap and happer for the ſaid mills, as the ſymbols of infeftment for the ſaid lands, in ſecurity as aforeſaid, to be holden in manner foreſaid; *redeemable* always, and under reverſion, in manner above ſpecified; and this in nowiſe ye leave undone: The which to do, the ſaid F. G. H. commits to you, and each of you, conjunctly and ſeverally, his bailies in that part foreſaid, his full and irrevocable power, by this his precept of ſeiſine, directed to you for that effect. *In witneſs* whereof, &c.

Subſcription clauſe.

FINIS.

MVSEVM
BRITAN
NICVM

The Author's neceſſary abſence from town when the book was printing, it is hoped, will prove an apology for the following Errata.

Page 8. laſt line, *for* immediately *read* mediately.
26. line 23. and 24. *dele* ſometime.
52. 3. *dele* foreſaids.
70. 2. *for* diſpoſition, *read* diſpoſitions.
75. 6. after A. B. add ———
77. 17. beginning of the line, *add* in.
81. 10. after upon, *ſay*, the precept obtained upon.
— 13. *for* of, *ſay*, on the.
82. 3. and wherever it occurs, *for* ſupremi, *read* ſereniſſimi.
88. 1. *for* his, *read* as.
138. 2. *after* thereof, *add* from and ſince the term of.
146, 14. *for* notary, *read* notario.
152. line laſt, *after* contract, *dele* period.
158. 5. from the bottom, *for* clauſula, *read* clauſulae.
165. 6. *for* I have, *read* he has.
210. 1. *for* preſent, *read* precept.
245. *after* parentheſis, *add*, together with all right, &c.
248. 5. from the bottom, *for* at ſo, *read* as to.
265. 4. *after* ſtation, *add* (*d*).
304. 7. *for* he, his, *read* I, my.
316. 14. *dele* ſaid.
15. *for* goods, *read* good.
321. 5. from the bottom, *dele* of.
323. 1. *after* my, *add* ———
227. 11. *for* grandchildren, *read* grandchild.
333. line laſt, *after* reſt, *add* of.
334. 1. *for* or, *read* are.
345. 13. *for* my, *read* might.
356. 9. *dele* I.
364. 10. *for* C. D. *read* C. B.
365. 4. from the bottom, *dele* reſpectively.
398. 3. *for* rolls, *read* roll.
403. 11. *for* habile, *read* habite.
419. —*for* my ——— *read* ——— my.
422. 5. from the bottom, *for* accountant, *read* accountants.

ERRATA.

Page 463. line 3. *for* diſpoſition, *read* diſpenſation.
466. 1. *after* C. *add* in virtue of diſpenſation contained in the charters of the ſaid lands.
466. 2. *for* diſpoſition, *read* diſpenſation.
377. 25. *after* heir, *add* in general.
495. 18. *for* toto et integro, *read* totis et integris (inſere terras).
502. 20. after dated, *for* ——— *read* and.
510. 5. *after* annualrent, *add* and alſo for the ſaid lands.
511. 12. *after* preſence, *add* of.
512. 7. from the bottom, *for* to, *read* by.
523. 4. *for* balivis, *read* balivus.
524. 12. *for* conſtituit, *read* conſtitut.
524. 23. *after* feci, *add* et
525. 8. *for* dicto, *read* dict.
529. 2. *for* writings, *read* writing.
531. 15. *dele* as,
536. 8. *for* a full point, a comma.
536. 6. from the bottom, *for* voted, *read* veſted.
545. laſt line, *for* in, *read* on.
551. 5. from the bottom, *dele* fixed.

MARGINAL ERRATA.

Page 103. *for* ſubſcription, *read* ſubſumption.
342. oppoſite to line 18, *add* Condition 1ſt, to bear name and arms.
343. oppoſite to line 6. *add* Condition 2d, to record the tailzies.
478. *for* preſented, *read* preſentee.